

# Exhibit 2

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN FRANCISCO DIVISION

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5  
6 IN RE: VOLKSWAGEN "CLEAN DIESEL"  
7 MARKETING, SALES PRACTICES, AND  
8 PRODUCTS LIABILITY LITIGATION  
9

10 MDL No. 2672 CRB (JSC)  
11

12 -----  
13  
14  
15 VIDEOTAPED DEPOSITION OF  
16 HONORABLE LOUIS J. FREEH  
17

18  
19 Monday, December 23, 2019

20 8:11 a.m. - 4:30 p.m.  
21

22  
23 Reported by:

24 Joan Ferrara, RMR, FCRR

25 Job No. 294702

Louis J. Freeh  
12/23/2019

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<p style="text-align: right;">Page 2</p> <p>1</p> <p>2</p> <p>3</p> <p>4 December 23, 2019</p> <p>5 8:11 a.m.</p> <p>6 New York, New York</p> <p>7</p> <p>8</p> <p>9</p> <p>10 Videotaped Deposition of HONORABLE</p> <p>11 LOUIS J. FREEH, held at the offices of</p> <p>12 Sullivan &amp; Cromwell, LLP, 535 Madison</p> <p>13 Avenue, New York, New York, before Joan</p> <p>14 Ferrara, a Registered Merit Reporter,</p> <p>15 Federal Certified Realtime Reporter and</p> <p>16 Notary Public of the State of New York.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 THE VIDEOGRAPHER: This is media</p> <p>2 unit number one in the video</p> <p>3 deposition of Louis Freeh in the</p> <p>4 matter of In Re Volkswagen Clean</p> <p>5 Diesel Litigation.</p> <p>6 This deposition is being held at</p> <p>7 Sullivan &amp; Cromwell, 535 Madison</p> <p>8 Avenue, New York, New York, on</p> <p>9 December 23, 2019 at approximately</p> <p>10 8:11 a.m.</p> <p>11 My name is Jose Rivera from the</p> <p>12 firm of U.S. Legal Support and I am</p> <p>13 the legal video specialist.</p> <p>14 The court reporter is Joan</p> <p>15 Ferrara, also in association with U.S.</p> <p>16 Legal Support.</p> <p>17 For the record, would counsels</p> <p>18 please introduce themselves.</p> <p>19 MR. HEATHER: Fred Heather, for</p> <p>20 the witness and for the plaintiffs,</p> <p>21 from Glaser Weil.</p> <p>22 MR. RAHIE: John Rahie from</p> <p>23 Freeh Sporkin &amp; Sullivan.</p> <p>24 MR. GIUFFRA: It's Robert</p> <p>25 Giuffra from Sullivan &amp; Cromwell for</p>
<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S:</p> <p>2</p> <p>3 GLASER WEIL</p> <p>4 Attorneys for Plaintiff and The Witness</p> <p>5 10250 Constellation Boulevard</p> <p>6 19th Floor</p> <p>7 Los Angeles, California 90067</p> <p>8 BY: FRED D. HEATHER, ESQ.</p> <p>9</p> <p>10</p> <p>11</p> <p>12 SULLIVAN &amp; CROMWELL, LLP</p> <p>13 Attorneys for Defendant Volkswagen Group of</p> <p>14 America, Inc.</p> <p>15 125 Broad Street</p> <p>16 New York, New York 10004-2498</p> <p>17 BY: ROBERT J. GIUFFRA, JR., ESQ.</p> <p>18</p> <p>19 DYLAN M. ALUISE, ESQ.</p> <p>20</p> <p>21 SHARON L. NELLES, ESQ.</p> <p>22</p> <p>23 ALSO PRESENT:</p> <p>24 Jose Rivera, Videographer</p> <p>25 John G. Rahie</p>	<p style="text-align: right;">Page 5</p> <p>1 Freeh</p> <p>2 the defendants.</p> <p>3 MR. ALUISE: Dylan Aluisse. I'll</p> <p>4 be supporting Robert Giuffra.</p> <p>5 MS. NELLES: Sharon Nelles, from</p> <p>6 Sullivan &amp; Cromwell, for defendants.</p> <p>7 THE VIDEOGRAPHER: Now, will the</p> <p>8 court reporter please swear in the</p> <p>9 witness.</p> <p>10 L O U I S F R E E H ,</p> <p>11 called as a witness, having been</p> <p>12 duly sworn by a Notary Public, was</p> <p>13 examined and testified as follows:</p> <p>14 (Exhibit 198, Expert Witness</p> <p>15 Report of Honorable Louis J. Freeh</p> <p>16 (Retired) December 2, 2009, was marked</p> <p>17 for Identification, as of this date.)</p> <p>18 EXAMINATION BY</p> <p>19 MR. GIUFFRA:</p> <p>20 Q Why don't we start.</p> <p>21 Mr. Freeh, I've just handed you</p> <p>22 a document which has been marked Exhibit</p> <p>23 198. It's entitled Expert Witness Report</p> <p>24 of Honorable Louis J. Freeh (Retired)</p> <p>25 December 2, 2009.</p> <p>Do you see it?</p>

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<p style="text-align: center;">Freeh</p> <p>1 A Yes, sir.</p> <p>2 Q And is this your expert report</p> <p>3 that you propose to have filed in</p> <p>4 connection with this litigation?</p> <p>5 A Yes, it is.</p> <p>6 Q And are all of your opinions</p> <p>7 that you intend to express in the</p> <p>8 litigation of this case stated in this</p> <p>9 report?</p> <p>10 A Correct.</p> <p>11 Q And when were you first</p> <p>12 contacted to serve as an expert in this</p> <p>13 case?</p> <p>14 A I think about 4 or 5 months ago.</p> <p>15 Q And who contacted you?</p> <p>16 A Fred Heather.</p> <p>17 Q Anyone else?</p> <p>18 A No.</p> <p>19 Q Now, at any time in the history</p> <p>20 of the world, could you state for the</p> <p>21 record all lawyers from the United States</p> <p>22 Department of Justice that you've ever</p> <p>23 discussed Volkswagen with.</p> <p>24 A I would say only two lawyers.</p> <p>25 Q Okay.</p>	<p style="text-align: center;">Freeh</p> <p>1 A Yes.</p> <p>2 Q Do you know Mr. Weissman?</p> <p>3 A Yes.</p> <p>4 Q Do you have a high opinion of</p> <p>5 Mr. Weissman's professional qualifications</p> <p>6 as a prosecutor?</p> <p>7 A Mixed.</p> <p>8 Q Why mixed?</p> <p>9 A Well, some of the cases that he</p> <p>10 worked on.</p> <p>11 Q Can you say anything more about</p> <p>12 why you have a mixed opinion?</p> <p>13 A No. I think some of the cases</p> <p>14 that he's worked on that are publicly</p> <p>15 reported have some issues. The Andersen</p> <p>16 case might be one.</p> <p>17 Q Why did you think -- do you</p> <p>18 think he mishandled the Andersen case?</p> <p>19 MR. HEATHER: I'm just going to</p> <p>20 object. Outside the scope of his</p> <p>21 expert report. You can answer.</p> <p>22 A Yeah, I can't give an opinion on</p> <p>23 that. You asked me what my opinion was of</p> <p>24 him and it's mixed.</p> <p>25 Q Well, the Andersen case was a</p>
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<p style="text-align: center;">Freeh</p> <p>1 A John Cruden, who at the time was</p> <p>2 the Assistant Attorney General for</p> <p>3 environmental, and I believe Sally Yates</p> <p>4 who was then the Deputy Attorney General.</p> <p>5 Q So you've never discussed the</p> <p>6 Volkswagen case with Leslie Caldwell?</p> <p>7 A No.</p> <p>8 Q And have you ever discussed the</p> <p>9 Volkswagen case with Andrew Weissman?</p> <p>10 A No.</p> <p>11 Q Have you ever discussed the</p> <p>12 Volkswagen case with Loretta Lynch?</p> <p>13 A No.</p> <p>14 Q Have you ever discussed the</p> <p>15 Volkswagen case with any United States</p> <p>16 Attorney or Assistant United States</p> <p>17 Attorney from the Eastern District of</p> <p>18 Michigan?</p> <p>19 A No.</p> <p>20 Q And do you have -- do you know</p> <p>21 Leslie Caldwell?</p> <p>22 A Yes.</p> <p>23 Q Do you have a high opinion of</p> <p>24 her professional qualifications as a</p> <p>25 prosecutor?</p>	<p style="text-align: center;">Freeh</p> <p>1 case where a large corporation or a large</p> <p>2 entity was criminally indicted.</p> <p>3 Did you agree with the decision</p> <p>4 to indict Arthur Andersen?</p> <p>5 MR. HEATHER: Objection. Again,</p> <p>6 it's calling for expert opinion.</p> <p>7 Outside the scope. And I'd like to</p> <p>8 have a continuing objection as to</p> <p>9 these questions. I mean at some</p> <p>10 point --</p> <p>11 MR. GIUFFRA: You can object to</p> <p>12 the form. He's your witness. I'm</p> <p>13 allowed to ask my questions.</p> <p>14 A Well, I don't know the facts of</p> <p>15 that case. I can't give an opinion on</p> <p>16 that.</p> <p>17 Q But what about the Andersen case</p> <p>18 caused you to question Mr. Weissman's</p> <p>19 handling of his role as prosecutor?</p> <p>20 MR. HEATHER: Same objection.</p> <p>21 A Well, the indictment put a large</p> <p>22 company out of business and the case was</p> <p>23 later taken down by the court.</p> <p>24 Q Now, in your own words could you</p> <p>25 please just describe what you view to be</p>

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<p>Freeh</p> <p>1 your assignment in this case.</p> <p>2 A So my assignment was to look at</p> <p>3 the sentence in the court by Judge Cox and</p> <p>4 to review the facts and the papers and the</p> <p>5 records and give an opinion whether the</p> <p>6 sentence imposed was consistent with the</p> <p>7 conduct and consistent with the applicable</p> <p>8 sentencing guidelines, and to also review</p> <p>9 whether or not there were facts that might</p> <p>10 have been offered and presented to the</p> <p>11 sentencing judge which were not presented</p> <p>12 by the company, and also to look at the</p> <p>13 subsequent, subsequent to the sentence,</p> <p>14 sales by the company of what they marketed</p> <p>15 as certified pre-owned vehicles.</p> <p>16 Q Now, are you aware that the</p> <p>17 Jones Day law firm did an internal</p> <p>18 investigation on behalf of Volkswagen in</p> <p>19 connection with the diesel emissions</p> <p>20 issues?</p> <p>21 A I believe you told me that, yes.</p> <p>22 Q Do you have any other knowledge</p> <p>23 of the role of Jones Day in the diesel</p> <p>24 emissions issue other than what I told you?</p> <p>25 A No.</p>	<p>Freeh</p> <p>1 Cruden.</p> <p>2 A Well, it was a very simple</p> <p>3 discussion. We had worked together in the</p> <p>4 BP matter, the settlement of the BP matter.</p> <p>5 He was in charge of that. I was the</p> <p>6 special master for the court in Louisiana.</p> <p>7 I think I was visiting him on a BP issue</p> <p>8 and mentioned that I had spoken to</p> <p>9 Volkswagen about being a compliance advisor</p> <p>10 to them.</p> <p>11 Q Could you --</p> <p>12 A Excuse me. He didn't really</p> <p>13 make any comment.</p> <p>14 Q Do you recall anything further</p> <p>15 about your discussion with Mr. Cruden?</p> <p>16 A Yes. He asked whether I would</p> <p>17 be interested in serving as a special</p> <p>18 master with Judge Breyer in the Volkswagen</p> <p>19 case, and I said no.</p> <p>20 Q Serving as a special master in</p> <p>21 what capacity in the Volkswagen case?</p> <p>22 A The same role that Bob Muller</p> <p>23 played.</p> <p>24 Q So as the settlement master?</p> <p>25 A I'm not sure that's exactly what</p>
Page 11	Page 13
<p>Freeh</p> <p>1 Q And when did I discuss with you</p> <p>2 the role of Jones Day in connection with</p> <p>3 the diesel emissions issues?</p> <p>4 A I think we were in Washington,</p> <p>5 it would have been in January of 2016, and</p> <p>6 you expressed some opinions about Jones Day</p> <p>7 as well as Kirkland.</p> <p>8 Q Do you know anything about the</p> <p>9 scope of the information that Jones Day</p> <p>10 provided to the United States Department of</p> <p>11 Justice in connection with its internal</p> <p>12 investigation into Volkswagen?</p> <p>13 A No.</p> <p>14 Q Just in terms of people that you</p> <p>15 spoke to, so I've got it, have you ever</p> <p>16 spoken to Loretta Lynch about anything</p> <p>17 relating to the Volkswagen investigation?</p> <p>18 A No.</p> <p>19 Q Have you ever spoken to Judge</p> <p>20 Cox about anything having to do with the</p> <p>21 Volkswagen litigation?</p> <p>22 A No.</p> <p>23 Q Why don't you just state for the</p> <p>24 record what you can recall about your</p> <p>25 discussions about Volkswagen with John</p>	<p>Freeh</p> <p>1 his title was, but it would be to fulfill</p> <p>2 the role that he subsequently played.</p> <p>3 Q Just to sort of round the</p> <p>4 circle, have you ever spoken to Robert</p> <p>5 Muller about anything having to do with the</p> <p>6 Volkswagen case?</p> <p>7 A Yes. When he became the special</p> <p>8 master, he called me and asked a lot of</p> <p>9 questions, asked for some advice with</p> <p>10 respect to how to organize his special</p> <p>11 master work administratively, not with</p> <p>12 respect to the content of the work, and I</p> <p>13 told him what we had done with the BP case</p> <p>14 in terms of setting up a structure.</p> <p>15 Q Do you recall anything further</p> <p>16 about your discussions with Mr. Muller in</p> <p>17 connection with his work on the Volkswagen</p> <p>18 case?</p> <p>19 A No.</p> <p>20 Q Have you since -- when was that</p> <p>21 conversation?</p> <p>22 A It would have been sometime</p> <p>23 after he was appointed, right after he was</p> <p>24 appointed. I'm not sure when that was.</p> <p>25 Q So sometime in early 2016, does</p>

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<p style="text-align: right;">Page 14</p> <p style="text-align: center;">Freeh</p> <p>1 that sound about right?</p> <p>2 A That sounds correct.</p> <p>3 Q Now, do you recall anything</p> <p>4 further about your discussions with</p> <p>5 Mr. Cruden in connection with the</p> <p>6 Volkswagen case?</p> <p>7 A No.</p> <p>8 Q Have you disclosed for us today</p> <p>9 all of your conversations with Mr. Cruden</p> <p>10 about the Volkswagen case?</p> <p>11 A Yes, I believe so.</p> <p>12 Q Now, you indicated that you had</p> <p>13 discussed with Mr. Cruden serving as a</p> <p>14 compliance advisor?</p> <p>15 A Yes.</p> <p>16 Q Isn't it, in fact, the case that</p> <p>17 you had discussions with Volkswagen about</p> <p>18 becoming sort of special counsel to</p> <p>19 Volkswagen in connection with resolving</p> <p>20 civil and governmental litigations?</p> <p>21 MR. HEATHER: Objection to form.</p> <p>22 A You know, the conversations were</p> <p>23 varied, right. So I had some conversations</p> <p>24 with Judge Hohmann-Dennhardt. I had some</p> <p>25 with you. I had some with Manfred Doess.</p>	<p style="text-align: right;">Page 16</p> <p style="text-align: center;">Freeh</p> <p>1 she was hired by Volkswagen to go on their</p> <p>2 Management Board in the same position.</p> <p>3 Q Would it be fair to say that</p> <p>4 you're a close friend or a good friend of</p> <p>5 Ms. Hohmann-Dennhardt?</p> <p>6 A I wouldn't say a good friend.</p> <p>7 Q Are you a friend of</p> <p>8 Ms. Hohmann-Dennhardt?</p> <p>9 A Yes.</p> <p>10 Q And when was the last time you</p> <p>11 spoke to Ms. Hohmann-Dennhardt?</p> <p>12 A A couple of years ago.</p> <p>13 Q And what were the circumstances</p> <p>14 of your discussions with</p> <p>15 Ms. Hohmann-Dennhardt a couple of years</p> <p>16 ago?</p> <p>17 A The attorney that worked for</p> <p>18 her, Daimler, got very, very sick with</p> <p>19 cancer. So we spoke about that.</p> <p>20 Q Did you ever have any</p> <p>21 discussions with Ms. Hohmann-Dennhardt</p> <p>22 about the circumstances surrounding her</p> <p>23 leaving Volkswagen?</p> <p>24 A No.</p> <p>25 Q Do you know why</p>
<p style="text-align: right;">Page 15</p> <p style="text-align: center;">Freeh</p> <p>1 So it varied. The role was never agreed</p> <p>2 upon.</p> <p>3 Obviously, I was not hired. But</p> <p>4 we talked about being an advisor to the</p> <p>5 board on compliance. We talked about</p> <p>6 special counsel. But it was a variety of</p> <p>7 different conversations.</p> <p>8 Q What was your understanding of</p> <p>9 what your role would be as special counsel</p> <p>10 to Volkswagen?</p> <p>11 A That I would be helping the</p> <p>12 board with respect to compliance issues,</p> <p>13 which was really the template that we had</p> <p>14 used with Daimler, and what I had discussed</p> <p>15 with Judge Hohmann-Dennhardt was basically</p> <p>16 doing what I had done in Stuttgart with the</p> <p>17 Daimler case.</p> <p>18 Q Did you have discussions with</p> <p>19 Ms. Hohmann-Dennhardt -- let's state for</p> <p>20 the record, who is Ms. Hohmann-Dennhardt?</p> <p>21 A So she was the Management Board</p> <p>22 member in Daimler for compliance and legal</p> <p>23 affairs. She was appointed while I was</p> <p>24 serving as the Department of Justice</p> <p>25 monitor. And then towards the end of 2015,</p>	<p style="text-align: right;">Page 17</p> <p style="text-align: center;">Freeh</p> <p>1 Ms. Hohmann-Dennhardt left Volkswagen?</p> <p>2 A No.</p> <p>3 Q Have you ever discussed with</p> <p>4 Ms. Hohmann-Dennhardt anything related to</p> <p>5 topics bearing on your expert report in</p> <p>6 this case?</p> <p>7 A No.</p> <p>8 Q Is Ms. Hohmann-Dennhardt aware</p> <p>9 that you're serving as an expert in this</p> <p>10 case?</p> <p>11 A As far as I know, she's not</p> <p>12 aware.</p> <p>13 Q Let's just turn to your expert</p> <p>14 report for a second just to sort of get it</p> <p>15 all down.</p> <p>16 On page -- we'll literally just</p> <p>17 go right through it and then I'll ask you</p> <p>18 some other questions.</p> <p>19 A Okay.</p> <p>20 Q On page 3, am I correct that</p> <p>21 your expert testimony concerns the plea</p> <p>22 agreement entered into between U.S. and</p> <p>23 Volkswagen that was approved by the court</p> <p>24 on April 21, 2017?</p> <p>25 A Yes. I give an opinion about</p>

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<p style="text-align: right;">Page 30</p> <p style="text-align: center;">Freeh</p> <p>1 A I believe you did.</p> <p>2 Q And I provided you with that</p> <p>3 report in connection with your possible</p> <p>4 retention as a lawyer to Volkswagen,</p> <p>5 correct?</p> <p>6 A Well, I'm not sure as a lawyer.</p> <p>7 You provided it to me in connection with</p> <p>8 our discussions about how I could assist</p> <p>9 the company. And as I recall, you also</p> <p>10 gave it to me to highlight what you</p> <p>11 described as attorney dysfunction in</p> <p>12 Kirkland.</p> <p>13 Q Sitting here today, do you</p> <p>14 believe that among other roles that you</p> <p>15 were considered for, for Volkswagen, back</p> <p>16 in 2016, would you agree that one of those</p> <p>17 roles was to serve as an attorney to the</p> <p>18 company?</p> <p>19 A Yes.</p> <p>20 Q Now, in your compensation</p> <p>21 section of your expert report, it says that</p> <p>22 you're being compensated at the rate of</p> <p>23 \$1,850 an hour.</p> <p>24 A Yes.</p> <p>25 Q Do you see that?</p>	<p style="text-align: right;">Page 32</p> <p style="text-align: center;">Freeh</p> <p>1 the rate you'll be compensated for if you</p> <p>2 testify at the trial in this case?</p> <p>3 A We haven't agreed on that.</p> <p>4 Q So you may have a higher rate of</p> <p>5 compensation if you testify at trial?</p> <p>6 A No, it wouldn't be higher.</p> <p>7 Q Now, the time when you were</p> <p>8 first discussing serving as an expert in</p> <p>9 this case, did you disclose to plaintiff's</p> <p>10 counsel your prior involvement with</p> <p>11 Volkswagen?</p> <p>12 A Yes.</p> <p>13 Q And what did you tell</p> <p>14 plaintiff's counsel about your prior</p> <p>15 involvement with Volkswagen?</p> <p>16 MR. HEATHER: I'm going to</p> <p>17 object to that on the grounds that</p> <p>18 it's privileged.</p> <p>19 BY MR. GIUFFRA:</p> <p>20 Q Did you discuss with plaintiff's</p> <p>21 counsel the fact that you had repeated</p> <p>22 conversations with Ms. Hohmann-Dennhardt</p> <p>23 about being retained by Volkswagen?</p> <p>24 MR. HEATHER: Same objection.</p> <p>25 BY MR. GIUFFRA:</p>
<p style="text-align: right;">Page 31</p> <p style="text-align: center;">Freeh</p> <p>1 Now, are you also -- let me</p> <p>2 restate that.</p> <p>3 When did the meter start running</p> <p>4 on the \$1,850 per hour?</p> <p>5 A When I started preparing for the</p> <p>6 deposition.</p> <p>7 Q Preparing for the deposition.</p> <p>8 How many hours have you spent</p> <p>9 preparing for this deposition?</p> <p>10 A I'm not sure.</p> <p>11 Q Is it 5 hours, 10 hours, 20</p> <p>12 hours?</p> <p>13 A More like 10 to 15 hours.</p> <p>14 Q Ten to 15 hours.</p> <p>15 And then you'll be paid for your</p> <p>16 testimony today, right?</p> <p>17 A Yes.</p> <p>18 Q And then if you were to testify</p> <p>19 at trial, you'll also be compensated,</p> <p>20 right?</p> <p>21 A Correct.</p> <p>22 Q And that's all on top of the</p> <p>23 \$50,000, right?</p> <p>24 A It is.</p> <p>25 Q And the -- is the rate of \$1,850</p>	<p style="text-align: right;">Page 33</p> <p style="text-align: center;">Freeh</p> <p>1 Q It's a yes or no question. I'm</p> <p>2 not asking for the disclosure of any</p> <p>3 privileged information.</p> <p>4 A Yes.</p> <p>5 Q And did you discuss with</p> <p>6 plaintiff's counsel that you had had</p> <p>7 multiple conversations with Manfred Doess,</p> <p>8 the general counsel of Volkswagen AG, about</p> <p>9 being, coming on board as a lawyer for</p> <p>10 Volkswagen?</p> <p>11 A Yes, and with you. But again,</p> <p>12 not solely as a lawyer. There were</p> <p>13 multiple roles that were being discussed</p> <p>14 during that period.</p> <p>15 Q Don't worry, we'll get to that.</p> <p>16 We'll cover it. I just want to get the</p> <p>17 general parameters of what you discussed</p> <p>18 with plaintiff's counsel.</p> <p>19 In connection with serving as an</p> <p>20 expert in this matter, did you have any</p> <p>21 discussions with any ethics council about</p> <p>22 whether you can serve as an expert in this</p> <p>23 case in light of your prior discussions</p> <p>24 with Volkswagen?</p> <p>25 A We discussed it internally, but</p>

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<p style="text-align: right;">Page 34</p> <p style="text-align: center;">Freeh</p> <p>1 not with a separate expert.</p> <p>2 Q So you have not consulted with</p> <p>3 an ethics expert on whether your prior</p> <p>4 involvement with Volkswagen in some way</p> <p>5 might be disabling in serving as an expert</p> <p>6 in this matter?</p> <p>7 A No.</p> <p>8 MR. HEATHER: Objection to form.</p> <p>9 A No.</p> <p>10 Q Now, am I correct that the</p> <p>11 purpose of your expert report is to -- let</p> <p>12 me restate that.</p> <p>13 Am I correct that the plan would</p> <p>14 be that you would testify in connection</p> <p>15 with the punitive damages phase of this</p> <p>16 case?</p> <p>17 A I don't think so. That's not my</p> <p>18 understanding.</p> <p>19 My understanding is I would talk</p> <p>20 about the plea agreement and the sentence</p> <p>21 and whether, in my opinion, that accurately</p> <p>22 reflected, 1, the procedure that should</p> <p>23 have been followed under the guidelines;</p> <p>24 and 2, whether the sentence addressed the</p> <p>25 full scope of Volkswagen's misconduct, both</p>	<p style="text-align: right;">Page 36</p> <p style="text-align: center;">Freeh</p> <p>1 class action involving certified pre-owned</p> <p>2 cars?</p> <p>3 A I'm not familiar with the</p> <p>4 specifics of the case.</p> <p>5 Q Okay.</p> <p>6 But you believe it's a class</p> <p>7 action?</p> <p>8 A I think it's a class action.</p> <p>9 Q Do you have any understanding as</p> <p>10 to whether you would be an expert witness</p> <p>11 in connection with the setting of punitive</p> <p>12 damages in this case?</p> <p>13 A I don't know.</p> <p>14 Q Are you aware that under</p> <p>15 California law plaintiff cannot recover</p> <p>16 punitive damages for harm to others?</p> <p>17 MR. HEATHER: Objection to form.</p> <p>18 A No, I'm not an expert on</p> <p>19 California punitive damages law.</p> <p>20 Q Do you consider yourself an</p> <p>21 expert on the sentencing guidelines?</p> <p>22 A Yes, I think I am.</p> <p>23 Q Why do you consider yourself to</p> <p>24 be an expert on the sentencing guidelines?</p> <p>25 A Because I applied them as a</p>
<p style="text-align: right;">Page 35</p> <p style="text-align: center;">Freeh</p> <p>1 before and after the plea.</p> <p>2 Q Do you have an understanding as</p> <p>3 to in what phase of this case you would be</p> <p>4 testifying?</p> <p>5 A No.</p> <p>6 Q Do you have any understanding as</p> <p>7 to what this case is about?</p> <p>8 A I understand what the case is</p> <p>9 about.</p> <p>10 Q What's your understanding as to</p> <p>11 what this case is about?</p> <p>12 A It's a class action by people</p> <p>13 who purchased cars, cars that were sold as</p> <p>14 pre-owned certified cars and --</p> <p>15 Q So you think the case is a class</p> <p>16 action, is that right?</p> <p>17 A I think it's a class action.</p> <p>18 Q And do you know how many</p> <p>19 plaintiffs are in the case?</p> <p>20 A No.</p> <p>21 Q And do you know how much money</p> <p>22 damages the plaintiffs are seeking in this</p> <p>23 case?</p> <p>24 A No.</p> <p>25 Q Do you think that this is a</p>	<p style="text-align: right;">Page 37</p> <p style="text-align: center;">Freeh</p> <p>1 judge, I applied them as a prosecutor, I</p> <p>2 have a lot of familiarity with the</p> <p>3 calculations, and I think particularly</p> <p>4 because of my role as a judge, I have a</p> <p>5 completely different and unique insight</p> <p>6 into the guidelines and what judges expect</p> <p>7 when parties come before them for</p> <p>8 sentencing and prepare and submit materials</p> <p>9 in connection with sentencing.</p> <p>10 Q Okay.</p> <p>11 So you served as a United States</p> <p>12 District Judge for 2 years, correct?</p> <p>13 A Correct.</p> <p>14 Q And your term in office ended in</p> <p>15 1993, correct?</p> <p>16 A Yes.</p> <p>17 Q Since 1993, has any part of your</p> <p>18 professional responsibilities -- let me</p> <p>19 restate that.</p> <p>20 Since 1993, have you had any</p> <p>21 role in connection with -- let me restate</p> <p>22 that again. It must be early in the</p> <p>23 morning.</p> <p>24 Since 1993, have you had any</p> <p>25 involvement with the application of the</p>



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<p style="text-align: right;">Page 58</p> <p style="text-align: center;">Freeh</p> <p>1 their interactions with the United States</p> <p>2 Department Criminal Division with respect</p> <p>3 to the wrongdoing of the company?</p> <p>4 A No.</p> <p>5 Q So as far as you know, the</p> <p>6 lawyers who are representing Volkswagen in</p> <p>7 connection with its criminal resolution</p> <p>8 with the United States Department did not</p> <p>9 conceal any facts from the United States</p> <p>10 Department of Justice?</p> <p>11 A Do you include their general</p> <p>12 counsel in that?</p> <p>13 Q Just asking the question.</p> <p>14 A Yeah, so not all of them, I</p> <p>15 guess.</p> <p>16 Q When you say their general</p> <p>17 counsel, what do you mean?</p> <p>18 A The U.S. General Counsel.</p> <p>19 Q Do you believe -- let me restate</p> <p>20 this.</p> <p>21 When you said the U.S. General</p> <p>22 Counsel, what do you mean? Who are you</p> <p>23 referring to?</p> <p>24 A Well, there's information in the</p> <p>25 record about the U.S. Volkswagen General</p>	<p style="text-align: right;">Page 60</p> <p style="text-align: center;">Freeh</p> <p>1 Q Now, your opinion on the top of</p> <p>2 page 6 references something called</p> <p>3 certified pre-owned cars.</p> <p>4 A Uh-huh, yes.</p> <p>5 Q Are you aware that plaintiff's</p> <p>6 counsel in this case has made allegations</p> <p>7 about Volkswagen's sale of certified</p> <p>8 preowned cars?</p> <p>9 A Yes.</p> <p>10 Q The issue of whether Volkswagen</p> <p>11 is or is not selling certified pre-owned</p> <p>12 cars in violation of law, is that something</p> <p>13 you learned about from plaintiff's counsel?</p> <p>14 A Yes.</p> <p>15 Q Are you aware of Judge Breyer's</p> <p>16 recent ruling dated 12/10/2019 in which he</p> <p>17 wrote: "To the extent that VWGOA labeled</p> <p>18 the cars that it bought back pursuant to</p> <p>19 the settlement as certified pre-owned and</p> <p>20 to the extent that this labeling was</p> <p>21 improper, there is not a sufficient nexus</p> <p>22 between that conduct and the conduct that</p> <p>23 injured plaintiffs such that the conduct</p> <p>24 would be relevant in determining punitive</p> <p>25 damages."</p>
<p style="text-align: right;">Page 59</p> <p style="text-align: center;">Freeh</p> <p>1 Counsel Geanacopoulos.</p> <p>2 Q Do you know when</p> <p>3 Mr. Geanacopoulos ceased being the general</p> <p>4 counsel of Volkswagen Group of America?</p> <p>5 A No.</p> <p>6 Q Do you know if Mr. Geanacopoulos</p> <p>7 was the general counsel of Volkswagen Group</p> <p>8 of America in connection with -- during the</p> <p>9 period of the Volkswagen -- Volkswagen's</p> <p>10 settlement discussions with the United</p> <p>11 States Department of Justice Criminal</p> <p>12 Division?</p> <p>13 A I don't know his timeframe in</p> <p>14 the company.</p> <p>15 Q Sitting here today, as far as</p> <p>16 you know, Mr. Geanacopoulos has never been</p> <p>17 indicted, right?</p> <p>18 A No, not to my knowledge.</p> <p>19 Q And you would agree that in your</p> <p>20 experience as a federal judge, an</p> <p>21 indictment is not admissible evidence in a</p> <p>22 case, right?</p> <p>23 MR. HEATHER: Object to the</p> <p>24 form.</p> <p>25 A That's correct.</p>	<p style="text-align: right;">Page 61</p> <p style="text-align: center;">Freeh</p> <p>1 A To answer your question, I'm not</p> <p>2 aware of his Order.</p> <p>3 Q Okay.</p> <p>4 But I assume that you'd -- if</p> <p>5 Judge Breyer indicated that portion of your</p> <p>6 opinion was not relevant, you wouldn't be</p> <p>7 testifying about it, right?</p> <p>8 MR. HEATHER: Objection to form.</p> <p>9 A Yeah, he can make whatever</p> <p>10 ruling he needs.</p> <p>11 Q Now, do you know whether the</p> <p>12 actual pecuniary loss in the sentencing</p> <p>13 documents submitted in connection with the</p> <p>14 Volkswagen case was based on the gross</p> <p>15 sales price of the TDI vehicles sold in the</p> <p>16 United States?</p> <p>17 A So as I said, I don't know how</p> <p>18 they calculated that. I accepted it as the</p> <p>19 actual pecuniary loss because both parties</p> <p>20 agreed to it. But as I said, I didn't do</p> <p>21 an independent calculation. I don't know</p> <p>22 how they calculated it.</p> <p>23 Q Okay.</p> <p>24 So you don't know whether there</p> <p>25 had been discussions between the United</p>

<p style="text-align: right;">Page 62</p> <p style="text-align: center;">Freeh</p> <p>1 States Department of Justice Criminal</p> <p>2 Division and Volkswagen about the</p> <p>3 calculation of actual pecuniary loss?</p> <p>4 A I don't know.</p> <p>5 Q And you don't know whether that</p> <p>6 calculation of actual pecuniary loss was</p> <p>7 based on an arms-length negotiation between</p> <p>8 the United States Department of Justice and</p> <p>9 Volkswagen as to the amount of pecuniary</p> <p>10 loss?</p> <p>11 A As I said, I don't know how it</p> <p>12 was calculated.</p> <p>13 Q And you don't know whether</p> <p>14 Volkswagen was advocating a substantially</p> <p>15 lower actual pecuniary loss than the</p> <p>16 pecuniary loss it had agreed to?</p> <p>17 A Don't know.</p> <p>18 Q And again, your own knowledge of</p> <p>19 what that actual pecuniary loss constitutes</p> <p>20 is just based on what's in the sentencing</p> <p>21 documents you reviewed, right?</p> <p>22 A Yes, what the parties agreed to.</p> <p>23 Q Sitting here today, are you</p> <p>24 aware of any upper management of Volkswagen</p> <p>25 who have been convicted of criminal</p>	<p style="text-align: right;">Page 64</p> <p style="text-align: center;">Freeh</p> <p>1 clear, do you know what the largest</p> <p>2 criminal fine ever imposed by a United</p> <p>3 States Court on a corporation is?</p> <p>4 A You did, but I don't know.</p> <p>5 Q Okay.</p> <p>6 Are you aware of a United States</p> <p>7 Court ever imposing a criminal fine on a</p> <p>8 corporation of more than \$5 billion?</p> <p>9 A No. Offhand, I'm not.</p> <p>10 Q \$3 billion?</p> <p>11 A Again, I'd have to do some</p> <p>12 research. I don't know of anything.</p> <p>13 Q Sitting here today, you would</p> <p>14 agree that the criminal fine that was</p> <p>15 imposed in the Volkswagen case was \$2.8</p> <p>16 billion, right?</p> <p>17 A Yes.</p> <p>18 Q Are you aware of a larger</p> <p>19 criminal fine ever imposed by a United</p> <p>20 States Court in the history of the United</p> <p>21 States on a corporation?</p> <p>22 A I'd have to do the research. I</p> <p>23 don't know.</p> <p>24 MR. HEATHER: Bob, when you get</p> <p>25 to a convenient place, can we take a</p>
<p style="text-align: right;">Page 63</p> <p style="text-align: center;">Freeh</p> <p>1 offenses in the United States?</p> <p>2 A I think Mr. Schmidt entered some</p> <p>3 kind of a plea.</p> <p>4 Q Is it your understanding that</p> <p>5 Mr. Schmidt was upper management of</p> <p>6 Volkswagen?</p> <p>7 A I'd say he was probably middle</p> <p>8 management.</p> <p>9 Q Okay.</p> <p>10 What's your understanding of</p> <p>11 what his position was?</p> <p>12 A I think he was an engineer with</p> <p>13 respect to homologation and emissions.</p> <p>14 Q Other than Mr. Schmidt, are you</p> <p>15 aware of any member of Volkswagen</p> <p>16 management who has been convicted in the</p> <p>17 United States?</p> <p>18 A I'm aware of the Fifth</p> <p>19 Superseding Indictment and I believe</p> <p>20 there's some German charges I'm not</p> <p>21 familiar with. I don't know if there have</p> <p>22 been any convictions. I'm not aware of</p> <p>23 any.</p> <p>24 Q I may have asked you this</p> <p>25 question, so I apologize, but just to be</p>	<p style="text-align: right;">Page 65</p> <p style="text-align: center;">Freeh</p> <p>1 short break?</p> <p>2 MR. GIUFFRA: Yeah. Let's take</p> <p>3 just a couple of more minutes -- yeah,</p> <p>4 we'll take a break now, that's fine.</p> <p>5 Thank you.</p> <p>6 THE VIDEOGRAPHER: The time is</p> <p>7 9:10 a.m. and we're going off the</p> <p>8 record.</p> <p>9 (Recess taken 9:10 a.m.)</p> <p>10 (Resumed 9:22 a.m.)</p> <p>11 THE VIDEOGRAPHER: The time is</p> <p>12 9:22 a.m. and we are back on the</p> <p>13 record.</p> <p>14 BY MR. GIUFFRA:</p> <p>15 Q Mr. Freeh, just to clarify for</p> <p>16 the record, when you were first retained as</p> <p>17 an expert in this case, what did you think</p> <p>18 the subject matter of the litigation was?</p> <p>19 A That plaintiffs who had claims</p> <p>20 against the company for damages in</p> <p>21 connection with the purchase of their</p> <p>22 vehicles were looking for compensation.</p> <p>23 Q And you thought it was a class</p> <p>24 action, right?</p> <p>25 A I thought it was a class action.</p>

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<p style="text-align: center;">Freeh</p> <p>1 A Yes.</p> <p>2 Q And that corporation had</p> <p>3 shareholders, right?</p> <p>4 A Yes.</p> <p>5 Q And would it be fair to say that</p> <p>6 the Board of Directors of a public company</p> <p>7 owes fiduciary duties to its shareholders,</p> <p>8 right?</p> <p>9 A Right.</p> <p>10 Q And the obligation of lawyers</p> <p>11 who represent a large corporation in</p> <p>12 interacting with the United States</p> <p>13 Department of Justice is to try to get the</p> <p>14 best deal you can, right?</p> <p>15 A Yes.</p> <p>16 Q And your obligation is not to</p> <p>17 just like hand money over to the United</p> <p>18 States Department of Justice for no reason</p> <p>19 at all, right?</p> <p>20 A Correct.</p> <p>21 Q Now, are you aware of any</p> <p>22 compliments paid to Volkswagen by Judge</p> <p>23 Breyer, the judge in this case, about its</p> <p>24 conduct in connection with resolving</p> <p>25 various litigation matters brought by</p>	<p style="text-align: center;">Freeh</p> <p>1 Q And am I correct that the term</p> <p>2 of that agreement provided for compensation</p> <p>3 of \$10 million over the course of that</p> <p>4 3-year term?</p> <p>5 A That sounds correct, yes.</p> <p>6 Q And there was also a provision</p> <p>7 in the agreement providing for contingent</p> <p>8 fee. Are you aware of that?</p> <p>9 A I'm not aware of that.</p> <p>10 Q You're not aware of any</p> <p>11 provision that you would have gotten</p> <p>12 additional monies beyond the \$10 million</p> <p>13 depending on the results that you were able</p> <p>14 to achieve for Volkswagen?</p> <p>15 A No, I'm not aware of that.</p> <p>16 Q Okay. We'll come back to</p> <p>17 that -- oh, actually, do you have it here?</p> <p>18 MR. GIUFFRA: Mark this as 199.</p> <p>19 (Exhibit 199, E-mail dated</p> <p>20 1/7/16, was marked for Identification,</p> <p>21 as of this date.)</p> <p>22 BY MR. GIUFFRA:</p> <p>23 Q This is a document -- we have an</p> <p>24 English translation that I'll attach.</p> <p>25 I'll represent to you this is an</p>
Page 75	Page 77
<p style="text-align: center;">Freeh</p> <p>1 consumers?</p> <p>2 MR. HEATHER: Objection to form.</p> <p>3 A I think he makes reference to</p> <p>4 that in the sentencing transcript I read.</p> <p>5 Q No, not Judge Cox. I'm talking</p> <p>6 about Judge Breyer.</p> <p>7 A Oh, Judge Breyer, I'm sorry, no.</p> <p>8 Q Are you aware of any public</p> <p>9 commentary about the speed with which</p> <p>10 Volkswagen resolved its civil and criminal</p> <p>11 litigation arising out of the TDI matter?</p> <p>12 A No.</p> <p>13 Q During the period when you were</p> <p>14 in discussions about being engaged with</p> <p>15 Volkswagen, do you recall any discussions</p> <p>16 that you had at which you discussed the</p> <p>17 speed with which the matter could be</p> <p>18 resolved?</p> <p>19 A Don't recall that.</p> <p>20 Q Does 5 years ring a bell to you?</p> <p>21 A No.</p> <p>22 Q Am I correct that you provided a</p> <p>23 draft agreement to Volkswagen providing for</p> <p>24 a 3-year term for your engagement?</p> <p>25 A Yes.</p>	<p style="text-align: center;">Freeh</p> <p>1 e-mail between you and Christine</p> <p>2 Hohmann-Dennhardt, dated January 7, 2016,</p> <p>3 and it attaches a document called Relevant</p> <p>4 Points of Contact and then there's an</p> <p>5 agreement between you and Volkswagen.</p> <p>6 Do you see that?</p> <p>7 A Yes.</p> <p>8 Q Okay.</p> <p>9 One question. Let's just start</p> <p>10 at the very first page of the document.</p> <p>11 Why did you send this to</p> <p>12 Ms. Hohmann-Dennhardt's personal account as</p> <p>13 opposed to her corporate account?</p> <p>14 A You know, I never had her</p> <p>15 corporate account. So when she left, I had</p> <p>16 her personal account -- I don't think even</p> <p>17 in my contacts, because I checked. I never</p> <p>18 had a Volkswagen address for her.</p> <p>19 Q Now, this agreement says that</p> <p>20 you had a draft letter of engagement based</p> <p>21 on our conversation last night.</p> <p>22 Do you see that?</p> <p>23 A Yes.</p> <p>24 Q Could you please state for the</p> <p>25 record what you can recall about your</p>

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<p style="text-align: right;">Page 78</p> <p style="text-align: center;">Freeh</p> <p>1 conversation with Ms. Hohmann-Dennhardt on</p> <p>2 January 6, 2016?</p> <p>3 A So that was in Wolfsburg and we</p> <p>4 talked about the meeting the next morning</p> <p>5 that was scheduled with the Board of</p> <p>6 Management and what my role would be and</p> <p>7 what the board might ask about in terms of</p> <p>8 the scope of what we were doing. It was</p> <p>9 just a discussion in preparation for the</p> <p>10 meeting.</p> <p>11 Q Did you ever meet with the Board</p> <p>12 of Management of Volkswagen?</p> <p>13 A Yes.</p> <p>14 Q And how many times did you meet</p> <p>15 with the Board of Management?</p> <p>16 A Just once, on the 6th.</p> <p>17 Q Did you make a full presentation</p> <p>18 to the Board of Management?</p> <p>19 MR. HEATHER: Objection to the</p> <p>20 form.</p> <p>21 A I made a presentation to them.</p> <p>22 They asked some questions.</p> <p>23 Q And that was in connection with</p> <p>24 your retention as a lawyer for Volkswagen,</p> <p>25 right?</p>	<p style="text-align: right;">Page 80</p> <p style="text-align: center;">Freeh</p> <p>1 with Ms. Hohmann-Dennhardt on the terms of</p> <p>2 your engagement?</p> <p>3 A We had a general agreement, I</p> <p>4 think, yes.</p> <p>5 Q And that would include, you</p> <p>6 know, the scope of what you would be doing,</p> <p>7 right?</p> <p>8 A Yes.</p> <p>9 Q Okay.</p> <p>10 Now, if you just look on page</p> <p>11 K VW-235.</p> <p>12 A Okay.</p> <p>13 Q It said that you were going to</p> <p>14 be commissioned as a special counsel.</p> <p>15 Do you see that?</p> <p>16 A Yes.</p> <p>17 Q And then it said you would</p> <p>18 handle court proceedings enforcement</p> <p>19 measures as well as official measures in</p> <p>20 reference to examining the investigations</p> <p>21 initiated by the United States of America</p> <p>22 concerning exhaust gas emissions.</p> <p>23 Do you see that?</p> <p>24 A Yes.</p> <p>25 Q Does that fairly state the scope</p>
<p style="text-align: right;">Page 79</p> <p style="text-align: center;">Freeh</p> <p>1 A Yes.</p> <p>2 Q Now, let's just turn and look at</p> <p>3 the agreement first. I just want to try</p> <p>4 and refresh your recollection.</p> <p>5 If you look on page -- it's</p> <p>6 K VW -- that's your law firm's name or Bates</p> <p>7 number, am I right?</p> <p>8 A I'm sorry?</p> <p>9 Q Do you know what K VW stands for,</p> <p>10 down at the Bates number, down at the</p> <p>11 bottom of these documents?</p> <p>12 A No.</p> <p>13 Q This was a document that would</p> <p>14 have been produced by you in response to a</p> <p>15 subpoena that was --</p> <p>16 A Knight for Volkswagen -- I</p> <p>17 assume that's correct, but I don't know.</p> <p>18 Q Okay.</p> <p>19 Now, I just want to sort of take</p> <p>20 you through this agreement.</p> <p>21 Now, this agreement was based on</p> <p>22 a discussion that you had with</p> <p>23 Ms. Hohmann-Dennhardt, right?</p> <p>24 A Yes.</p> <p>25 Q Had you reached an agreement</p>	<p style="text-align: right;">Page 81</p> <p style="text-align: center;">Freeh</p> <p>1 of what your understanding was of your role</p> <p>2 that was being contemplated with</p> <p>3 Volkswagen?</p> <p>4 A It was a discussion of what she</p> <p>5 was contemplating as the role, but I'd say</p> <p>6 not anyone beyond her at that point.</p> <p>7 Q Okay.</p> <p>8 And then you see up on the top</p> <p>9 in the letter, it says Hans Dieter Potsch,</p> <p>10 P-O-T-S-C-H?</p> <p>11 A Yes.</p> <p>12 Q He was the Chairman of the Board</p> <p>13 of Supervisors, right?</p> <p>14 A Correct.</p> <p>15 Q And you understood that, you</p> <p>16 know, was a very important person within</p> <p>17 Volkswagen, right?</p> <p>18 A Yes.</p> <p>19 Q And you actually have some</p> <p>20 understanding of German corporate law,</p> <p>21 right?</p> <p>22 A Yes.</p> <p>23 Q And so the Chairman of the Board</p> <p>24 of Supervisors of a German company is, you</p> <p>25 know, probably the most senior official in</p>

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<p style="text-align: right;">Page 82</p> <p style="text-align: center;">Freeh</p> <p>1 the company, right?</p> <p>2 A It depends on the personalities,</p> <p>3 but sure, very significant powerful</p> <p>4 individual.</p> <p>5 Q And then the next person,</p> <p>6 Matthias Muller, M-U-L-L-E-R, he was</p> <p>7 Chairman of the Board of Management, right?</p> <p>8 A Yes.</p> <p>9 Q He would be the equivalent of</p> <p>10 the CEO of the company, right?</p> <p>11 A Correct.</p> <p>12 Q Another very senior person at</p> <p>13 Volkswagen, right?</p> <p>14 A Yes.</p> <p>15 Q And Ms. Christine</p> <p>16 Hohmann-Dennhardt, at this point in time,</p> <p>17 was the Board Manager for Volkswagen for</p> <p>18 Law and Integrity, right?</p> <p>19 A Yes.</p> <p>20 Q So she was even above the</p> <p>21 general counsel of the company, right, at</p> <p>22 that point in time?</p> <p>23 A Yes.</p> <p>24 Q Okay.</p> <p>25 So these are probably three of</p>	<p style="text-align: right;">Page 84</p> <p style="text-align: center;">Freeh</p> <p>1 opt-out litigation?</p> <p>2 A People who didn't want to be in</p> <p>3 the class action.</p> <p>4 Q Do you know whether the action</p> <p>5 that we're dealing with here today is an</p> <p>6 opt-out case?</p> <p>7 A I believe it is.</p> <p>8 Q Okay.</p> <p>9 Do you know how many plaintiffs</p> <p>10 there are in the case?</p> <p>11 A No.</p> <p>12 Q Do you know the value of the</p> <p>13 cars that they purchased?</p> <p>14 A No.</p> <p>15 Q Do you know the amount of</p> <p>16 damages they're seeking?</p> <p>17 A No.</p> <p>18 Q Are you aware that the</p> <p>19 plaintiffs have made demands of Volkswagen</p> <p>20 in excess of million -- \$2 million a car?</p> <p>21 MR. HEATHER: Object to the</p> <p>22 form.</p> <p>23 A I don't know that.</p> <p>24 Q Would that surprise you?</p> <p>25 MR. HEATHER: Objection to the</p>
<p style="text-align: right;">Page 83</p> <p style="text-align: center;">Freeh</p> <p>1 the most senior people within the whole</p> <p>2 Volkswagen organization, right?</p> <p>3 A Yes.</p> <p>4 Q And now the -- there's a</p> <p>5 discussion here under scope of mandate.</p> <p>6 A Uh-huh.</p> <p>7 Q Do you see that?</p> <p>8 A Yes.</p> <p>9 Q Would it be fair to say that,</p> <p>10 you know, your scope of mandate would</p> <p>11 include civil investigations, court</p> <p>12 proceedings and official measures in the</p> <p>13 context with exhaust gas emissions?</p> <p>14 A Yeah. We stated it -- we agreed</p> <p>15 to put it in the broadest terms.</p> <p>16 Q And was it your understanding</p> <p>17 that your engagement would include civil</p> <p>18 litigation brought by consumers against</p> <p>19 Volkswagen?</p> <p>20 A Those would be some of the</p> <p>21 lawsuits, correct.</p> <p>22 Q And potentially that would</p> <p>23 include opt-out litigation, right?</p> <p>24 A Yes.</p> <p>25 Q What is your understanding of</p>	<p style="text-align: right;">Page 85</p> <p style="text-align: center;">Freeh</p> <p>1 form.</p> <p>2 A I'd have to see what the claim</p> <p>3 was based on.</p> <p>4 Q Now, paragraph 2 uses the</p> <p>5 expression extremely complex legal</p> <p>6 problems.</p> <p>7 Do you see that?</p> <p>8 A Yes.</p> <p>9 Q You would agree that in January</p> <p>10 2016 Volkswagen faced extremely complex</p> <p>11 legal problems, right?</p> <p>12 A Yes.</p> <p>13 Q Now, just -- and would it be</p> <p>14 fair to say that when you wrote this -- did</p> <p>15 you prepare this document or did</p> <p>16 Ms. Hohmann-Dennhardt?</p> <p>17 A I prepared it.</p> <p>18 Q Do you speak German?</p> <p>19 A No.</p> <p>20 Q Do you know who would have</p> <p>21 prepared the German version of this</p> <p>22 document?</p> <p>23 A I don't recall.</p> <p>24 Q Now, in January 2016, was it</p> <p>25 your understanding that the job you were</p>

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<p>Freeh</p> <p>1 looking for was to be in charge of all of</p> <p>2 Volkswagen's litigation arising out of the</p> <p>3 diesel emissions matters in the United</p> <p>4 States?</p> <p>5 A So her request was that I come</p> <p>6 in as a special counsel to advise her and</p> <p>7 the board and oversee everything that was</p> <p>8 taking place in connection with the</p> <p>9 emissions issues.</p> <p>10 Q And the meeting you had with --</p> <p>11 was it with the Board of Management on the</p> <p>12 7th?</p> <p>13 A I think it was the 6th, the</p> <p>14 Board of Management.</p> <p>15 Q Yeah. How long was that</p> <p>16 meeting?</p> <p>17 A No more than I'd say 90 minutes.</p> <p>18 Q Okay.</p> <p>19 And without disclosing any</p> <p>20 privileged communications, did you have</p> <p>21 discussions with the Board of Management</p> <p>22 about the diesel emissions exposure that</p> <p>23 the company faced in the United States?</p> <p>24 A I can't remember the exact</p> <p>25 details of the conversation. I described</p>	<p>Freeh</p> <p>1 A Yes.</p> <p>2 Q So the plan was you were going</p> <p>3 to get \$5 million per year for serving as</p> <p>4 special counsel, right?</p> <p>5 A Yes.</p> <p>6 Q And then am I correct that you</p> <p>7 were looking for a multi-year agreement,</p> <p>8 right?</p> <p>9 A Correct.</p> <p>10 Q And so the expectation was that</p> <p>11 your role would last at least 3 years,</p> <p>12 right?</p> <p>13 A Well, that was what Christine</p> <p>14 Hohmann-Dennhardt indicated she would need</p> <p>15 my total time and commitment for.</p> <p>16 Q Okay.</p> <p>17 Now, on the next page, page 4,</p> <p>18 there is a discussion of performance-based</p> <p>19 commission.</p> <p>20 Do you see that?</p> <p>21 A Yes.</p> <p>22 Q Now, it said that you were</p> <p>23 planning -- you wanted the company to pay</p> <p>24 you additional performance-based commission</p> <p>25 on top of the \$5 million per year, right?</p>
Page 87	Page 89
<p>Freeh</p> <p>1 to them the role that I could play. I</p> <p>2 spent a lot of time talking about my work</p> <p>3 at Daimler and the value would be for the</p> <p>4 board and them to have a compliance</p> <p>5 advisor.</p> <p>6 I don't think we talked much</p> <p>7 about the scope of the mandate, which is</p> <p>8 reflected in Exhibit 199. It was more a</p> <p>9 discussion of what had happened at Daimler,</p> <p>10 what I thought I could do to assist them.</p> <p>11 They asked a lot of questions.</p> <p>12 It was an English meeting. Everybody spoke</p> <p>13 English at the meeting.</p> <p>14 Q Was there a discussion during</p> <p>15 this meeting in January 2016 about the</p> <p>16 monetary exposure that Volkswagen faced</p> <p>17 from investigations and litigations in the</p> <p>18 United States arising out of the diesel</p> <p>19 matter?</p> <p>20 A No, not that I recall.</p> <p>21 Q Okay, now --</p> <p>22 A Didn't get that specific.</p> <p>23 Q Now, there's a discussion in</p> <p>24 this document of base remuneration.</p> <p>25 Do you see that?</p>	<p>Freeh</p> <p>1 A Correct.</p> <p>2 Q And that performance-based</p> <p>3 commission would depend on whether the</p> <p>4 company "achieved settlements with or</p> <p>5 decisions by U.S. authorities in litigating</p> <p>6 U.S. parties in the context of the</p> <p>7 above-mentioned special matters based on</p> <p>8 consulting negotiations, recommendations,</p> <p>9 and the work of the special counsel."</p> <p>10 Do you see that?</p> <p>11 A Yes.</p> <p>12 Q And that was accurate, right?</p> <p>13 A Well, you've read it accurately,</p> <p>14 yes.</p> <p>15 Q Now, as I understand it, your</p> <p>16 plan was to devote the majority of your</p> <p>17 working hours to your mandate for</p> <p>18 Volkswagen, right?</p> <p>19 A No. It was actually to devote</p> <p>20 all of my time and energy to it.</p> <p>21 Q And you were going to have to</p> <p>22 stop working on other professional business</p> <p>23 matters that you had, right?</p> <p>24 A Yes.</p> <p>25 Q Now, it says here -- I'll just</p>



<p style="text-align: right;">Page 126</p> <p style="text-align: center;">Freeh</p> <p>1 corporation is public, right?</p> <p>2 A The sentencing is usually</p> <p>3 public, yes.</p> <p>4 Q It's meaning that there are --</p> <p>5 in this case -- let me restate that.</p> <p>6 Are you aware that at the</p> <p>7 sentencing of the Volkswagen case there</p> <p>8 were reporters present?</p> <p>9 A Sure.</p> <p>10 Q The press, right?</p> <p>11 A Yes.</p> <p>12 Q And you were a federal</p> <p>13 prosecutor, right?</p> <p>14 A Yes.</p> <p>15 Q And would you have wanted a</p> <p>16 public company to disclose in open court</p> <p>17 all of your discussions with that company</p> <p>18 about information it had provided to you as</p> <p>19 a prosecutor?</p> <p>20 A Well, if I thought the</p> <p>21 information was relevant to the Court, I</p> <p>22 would submit it to the Court. You could do</p> <p>23 it in camera, as you know. You don't have</p> <p>24 to do it on the public record.</p> <p>25 But here, the judge clearly</p>	<p style="text-align: right;">Page 128</p> <p style="text-align: center;">Freeh</p> <p>1 nobody responded to it.</p> <p>2 Q Including from the Department of</p> <p>3 Justice?</p> <p>4 A As far as I know. Whether they</p> <p>5 submitted something to them in camera --</p> <p>6 there's nothing on the record, I think,</p> <p>7 that's sealed, but I don't know if there</p> <p>8 was any attempt to think about how they</p> <p>9 would communicate that to him.</p> <p>10 Q Are you aware of any -- let me</p> <p>11 restate that.</p> <p>12 Do you know the extent to which</p> <p>13 there were chambers discussions between the</p> <p>14 Department of Justice and Volkswagen and</p> <p>15 Judge Cox in connection with the</p> <p>16 sentencing?</p> <p>17 A No.</p> <p>18 Q You're not privy to any of those</p> <p>19 discussions?</p> <p>20 A No.</p> <p>21 Q So you don't know what</p> <p>22 discussions Judge Cox had with Volkswagen</p> <p>23 and the United States Department of Justice</p> <p>24 Criminal Division in connection with the</p> <p>25 sentencing of Volkswagen in camera?</p>
<p style="text-align: right;">Page 127</p> <p style="text-align: center;">Freeh</p> <p>1 wanted to know about upper management</p> <p>2 involvement and was not told.</p> <p>3 Q Well, did you think that the</p> <p>4 Department of Justice prosecutors had an</p> <p>5 obligation, if any, to the Court to</p> <p>6 disclose what they knew and what they had</p> <p>7 learned from Volkswagen about involvement</p> <p>8 of upper management?</p> <p>9 A Yes.</p> <p>10 Q And so do you think those</p> <p>11 prosecutors breached those duties to the</p> <p>12 Court in not disclosing to Judge Cox in</p> <p>13 open court what they were told by</p> <p>14 Volkswagen about wrongdoing by senior</p> <p>15 management?</p> <p>16 MR. HEATHER: Objection to form.</p> <p>17 A Well, first of all, they didn't</p> <p>18 have to make all their disclosures in open</p> <p>19 court.</p> <p>20 Secondly, I don't know what</p> <p>21 their discussions or deliberations or</p> <p>22 decisions were or what their thinking was</p> <p>23 at the time. All I know is that the judge</p> <p>24 specifically, more than specifically,</p> <p>25 repeatedly asked about upper management and</p>	<p style="text-align: right;">Page 129</p> <p style="text-align: center;">Freeh</p> <p>1 A No. But I know what he said in</p> <p>2 open court at the sentencing.</p> <p>3 Q Okay.</p> <p>4 And you don't have any</p> <p>5 understanding of the number of chambers</p> <p>6 conferences between Judge Cox and</p> <p>7 Volkswagen and the Department of Justice</p> <p>8 prior to the sentencing of Volkswagen?</p> <p>9 A No.</p> <p>10 Q You said earlier that Volkswagen</p> <p>11 had intentionally and deliberately not</p> <p>12 provided information to -- to whom, who</p> <p>13 were you referring to?</p> <p>14 A Well, I didn't say that. I said</p> <p>15 my opinion says either negligently or</p> <p>16 deliberately. So I didn't couch it only in</p> <p>17 terms of a deliberate misrepresentation.</p> <p>18 Q Well, but who was that</p> <p>19 information supposed to be provided to?</p> <p>20 A I think in this case it should</p> <p>21 have gone to the Court.</p> <p>22 Q Okay.</p> <p>23 Are you aware of any instances</p> <p>24 in your career where a public company in an</p> <p>25 open sentencing, meaning open to the</p>

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Page 130 Freeh	Page 132 Freeh
<p>1 public, disclosed facts to a federal judge?</p> <p>2 A I don't understand your</p> <p>3 question.</p> <p>4 Q Let me restate the question,</p> <p>5 okay.</p> <p>6 Okay. You don't know the extent</p> <p>7 to which Volkswagen provided information to</p> <p>8 the Department of Justice about wrongdoing</p> <p>9 by senior management, right?</p> <p>10 A Correct.</p> <p>11 Q And you don't know the extent to</p> <p>12 which information that was provided by</p> <p>13 Volkswagen was relied upon by the</p> <p>14 Department of Justice in the Fifth</p> <p>15 Superseding Indictment, right?</p> <p>16 A Correct.</p> <p>17 Q And you don't know the amount of</p> <p>18 money that Volkswagen spent on the Jones</p> <p>19 Day internal investigation, right?</p> <p>20 A Correct.</p> <p>21 Q And you don't know the scope of</p> <p>22 Jones Day internal investigation, right?</p> <p>23 A No.</p> <p>24 Q And you don't know how many</p> <p>25 people Jones Day interviewed, right?</p>	<p>1 form.</p> <p>2 A I'm not aware of any situation</p> <p>3 where a federal judge at sentencing has</p> <p>4 asked the specific questions that Judge Cox</p> <p>5 asked and was not given what I believe was</p> <p>6 then known to the company and the</p> <p>7 government.</p> <p>8 Q Do you believe it was the</p> <p>9 obligation of the United States Attorney's</p> <p>10 Office and the Department of Justice to</p> <p>11 provide information to Judge Cox in open</p> <p>12 court about what the Department of Justice</p> <p>13 knew about the involvement of upper</p> <p>14 management in the diesel emissions issues?</p> <p>15 A Perhaps not in open court, but</p> <p>16 they should have advised him one way or the</p> <p>17 other.</p> <p>18 Q And you don't know whether they</p> <p>19 did advise him in chambers?</p> <p>20 A Well, I'm not familiar with the</p> <p>21 chambers discussions, but his question</p> <p>22 would certainly indicate that he was not</p> <p>23 advised.</p> <p>24 Q Did Judge Cox impose a sentence</p> <p>25 at the hearing that you're referencing</p>
Page 131 Freeh	Page 133 Freeh
<p>1 A No.</p> <p>2 Q And you don't know how much --</p> <p>3 how many documents were reviewed in</p> <p>4 connection with the Jones Day</p> <p>5 investigation?</p> <p>6 A Not familiar at all with the</p> <p>7 specifics of the Jones Day investigation.</p> <p>8 Q You don't know the amount of</p> <p>9 money that was spent by Volkswagen to image</p> <p>10 computers, do you?</p> <p>11 A No.</p> <p>12 Q Okay.</p> <p>13 So sitting here today, are you</p> <p>14 aware of a situation where in connection</p> <p>15 with the sentencing of a corporation the</p> <p>16 company has taken upon itself, at a</p> <p>17 sentencing, to disclose information that it</p> <p>18 had confidentially provided to the</p> <p>19 Department of Justice in open court to a</p> <p>20 federal judge?</p> <p>21 MR. HEATHER: Objection. May I</p> <p>22 have the question read back, please?</p> <p>23 (The requested portion was read</p> <p>24 back by the Court Reporter.)</p> <p>25 MR. HEATHER: Object to the</p>	<p>1 where the question was asked or did he</p> <p>2 impose the sentence later?</p> <p>3 A He imposed it in April. The</p> <p>4 hearing was in March.</p> <p>5 Q Okay.</p> <p>6 So you don't know what</p> <p>7 discussions occurred between March and</p> <p>8 April between Judge Cox and Volkswagen and</p> <p>9 the Department of Justice?</p> <p>10 A No.</p> <p>11 Q In chambers, right?</p> <p>12 A No.</p> <p>13 Q So your opinion presupposes that</p> <p>14 there was no in-chambers discussion between</p> <p>15 Judge Cox and the United States Department</p> <p>16 of Justice and Volkswagen about the</p> <p>17 involvement of upper management in the</p> <p>18 company's diesel emissions issues?</p> <p>19 MR. HEATHER: Objection to form.</p> <p>20 A I don't know of any such</p> <p>21 discussions.</p> <p>22 Q Are you aware that Judge Cox is</p> <p>23 the judge who is handling other criminal</p> <p>24 cases involving Volkswagen?</p> <p>25 A I did hear that, yes.</p>



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<p style="text-align: right;">Page 146</p> <p style="text-align: center;">Freeh</p> <p>1 time.</p> <p>2 Q Really? Where the company --</p> <p>3 let me restate that.</p> <p>4 In your experience when a</p> <p>5 company cooperates with the U.S. Attorney's</p> <p>6 Office -- let me restate that.</p> <p>7 In your experience when a</p> <p>8 company cooperates with the Department of</p> <p>9 Justice, it normally provides information</p> <p>10 on a confidential basis, right?</p> <p>11 A Well, not always -- but yes, can</p> <p>12 be.</p> <p>13 Q And as a former federal</p> <p>14 prosecutor, you would agree that the United</p> <p>15 States Department of Justice wants to</p> <p>16 determine when information provided to it</p> <p>17 by a company that's cooperating with it is</p> <p>18 disclosed publicly, right?</p> <p>19 A Yes.</p> <p>20 Q And that's because prosecutors</p> <p>21 don't want other wrongdoers to know what</p> <p>22 information the government has obtained</p> <p>23 from the company that's cooperating with</p> <p>24 it, right?</p> <p>25 A That's one of the reasons, yeah.</p>	<p style="text-align: right;">Page 148</p> <p style="text-align: center;">Freeh</p> <p>1 A No, I've not.</p> <p>2 Q And in your long experience,</p> <p>3 have you ever seen a corporation at a</p> <p>4 criminal, corporate criminal sentencing</p> <p>5 disclose confidential information that the</p> <p>6 corporation had provided to the United</p> <p>7 States Department of Justice at the</p> <p>8 sentencing?</p> <p>9 MR. HEATHER: Objection to form.</p> <p>10 Asked and answered.</p> <p>11 A So I haven't represented a</p> <p>12 company in that circumstance.</p> <p>13 Q My question, though, is have you</p> <p>14 in your long experience, have you ever seen</p> <p>15 a company disclose confidential information</p> <p>16 that it had provided to the Department of</p> <p>17 Justice at a sentencing proceeding?</p> <p>18 A If the government agrees to it,</p> <p>19 yes.</p> <p>20 Q But not -- but if the</p> <p>21 government -- if the government was silent</p> <p>22 and didn't respond, have you ever seen a</p> <p>23 company jump up and say, oh, your Honor,</p> <p>24 let me give you some confidential</p> <p>25 information that I provided to the</p>
<p style="text-align: right;">Page 147</p> <p style="text-align: center;">Freeh</p> <p>1 Q And so in your experience, which</p> <p>2 is long, you would agree that prosecutors</p> <p>3 like to be the ones who decide what</p> <p>4 information that's been provided to them by</p> <p>5 a cooperating company is disclosed</p> <p>6 publicly, right?</p> <p>7 A Well, in my experience, I also</p> <p>8 know that if you're a prosecutor standing</p> <p>9 before a judge and the judge asks a</p> <p>10 specific question, as Judge Cox did at the</p> <p>11 sentencing, you would either answer him in</p> <p>12 open court or request to see him and</p> <p>13 defendant's counsel in a confidential</p> <p>14 proceeding. That didn't happen here, which</p> <p>15 is why I'm making --</p> <p>16 Q You don't know whether it</p> <p>17 happened here?</p> <p>18 A If you'd let me finish.</p> <p>19 Q Yeah.</p> <p>20 A That's why I make the conclusion</p> <p>21 that I stated there.</p> <p>22 Q Okay.</p> <p>23 Now, have you ever represented a</p> <p>24 corporation at a corporate criminal</p> <p>25 sentencing?</p>	<p style="text-align: right;">Page 149</p> <p style="text-align: center;">Freeh</p> <p>1 Department of Justice?</p> <p>2 A I don't personally know of an</p> <p>3 instance like that.</p> <p>4 Q And you would agree that</p> <p>5 normally it takes many months to make a</p> <p>6 criminal case, right?</p> <p>7 A Depends on the case.</p> <p>8 Q Sometimes years, right?</p> <p>9 A Yes.</p> <p>10 Q And you don't know when the</p> <p>11 Department of Justice made the judgment</p> <p>12 that it had enough evidence to file a</p> <p>13 superseding indictment in the Volkswagen</p> <p>14 case, right?</p> <p>15 A Well, I assume it would have</p> <p>16 been around the time that they returned the</p> <p>17 Fifth Superseding Indictment.</p> <p>18 Q And you don't know what work --</p> <p>19 let me restate that.</p> <p>20 You don't know sitting here</p> <p>21 today what information Volkswagen</p> <p>22 provided -- let me restate that.</p> <p>23 You don't know sitting here</p> <p>24 today what information Volkswagen's lawyers</p> <p>25 learned between April 2017 and March 2018</p>

<p style="text-align: right;">Page 150</p> <p style="text-align: center;">Freeh</p> <p>1 when the Fifth Superseding Indictment was</p> <p>2 filed, right?</p> <p>3 A I don't know what the lawyers</p> <p>4 learned, but if you look at the Schmidt</p> <p>5 e-mail and the other conversations, you</p> <p>6 could clearly conclude that the company,</p> <p>7 leaving aside the lawyers for the moment,</p> <p>8 the company had substantial knowledge of</p> <p>9 involvement by upper management.</p> <p>10 Q Okay.</p> <p>11 Do you believe the Schmidt</p> <p>12 e-mail is evidence of knowledge of the</p> <p>13 company's senior management of wrongdoing?</p> <p>14 A Yes.</p> <p>15 Q Do you know when the Schmidt</p> <p>16 e-mail was first provided to the United</p> <p>17 States Department of Justice?</p> <p>18 A No.</p> <p>19 Q Isn't it the case that you</p> <p>20 actually received a copy of the Schmidt</p> <p>21 e-mail in January 2016 in connection with</p> <p>22 your possible retention by Volkswagen?</p> <p>23 A Yes.</p> <p>24 Q And, in fact, I provided you</p> <p>25 with a copy of the Schmidt e-mail, right?</p>	<p style="text-align: right;">Page 152</p> <p style="text-align: center;">Freeh</p> <p>1 And you provided your views to</p> <p>2 us?</p> <p>3 A Yes.</p> <p>4 Q Other than the Schmidt e-mail,</p> <p>5 are you aware of any evidence of senior</p> <p>6 management wrongdoing?</p> <p>7 A I think there were conversations</p> <p>8 between Johnson, who I think was a</p> <p>9 whistleblower, and Horn, who was the</p> <p>10 America CEO. And I think from those</p> <p>11 conversations, as I understand them, there</p> <p>12 was clear statements about knowledge that</p> <p>13 at that point Horn should have had. I</p> <p>14 think those are in 2015.</p> <p>15 2014, of course, was the Schmidt</p> <p>16 e-mail. And I think it's fair to say, in</p> <p>17 my opinion, that Horn was on notice of what</p> <p>18 was going on and the options that Schmidt</p> <p>19 gave him, for instance, three of them were</p> <p>20 not all consistent with either what I would</p> <p>21 call a cooperation or a truthful disclosure</p> <p>22 to the interested parties.</p> <p>23 Q Well, do you know what</p> <p>24 Volkswagen's counsel had provided to the</p> <p>25 United States Department of Justice about</p>
<p style="text-align: right;">Page 151</p> <p style="text-align: center;">Freeh</p> <p>1 A Correct.</p> <p>2 Q And so certainly there was no,</p> <p>3 at least in our interactions, there was no</p> <p>4 desire on the part of Volkswagen's counsel</p> <p>5 to not provide the Schmidt e-mail to you,</p> <p>6 right?</p> <p>7 A No.</p> <p>8 Q And did you discuss the Schmidt</p> <p>9 e-mail with any representative of</p> <p>10 Volkswagen in January 2016?</p> <p>11 A Just you and the general</p> <p>12 counsel.</p> <p>13 Q Mr. Manfred Doess, right?</p> <p>14 A Yes.</p> <p>15 Q And you had discussions with</p> <p>16 both Mr. Doess and me about what the</p> <p>17 consequences of the Schmidt e-mail were,</p> <p>18 right?</p> <p>19 A Yes.</p> <p>20 Q And you provided, you know, your</p> <p>21 views as to what you thought the</p> <p>22 consequences of the Schmidt e-mail were,</p> <p>23 right?</p> <p>24 A You asked me what my views were.</p> <p>25 Q Yes.</p>	<p style="text-align: right;">Page 153</p> <p style="text-align: center;">Freeh</p> <p>1 Mr. Horn's knowledge of the diesel</p> <p>2 emissions issue prior to the plea</p> <p>3 agreement?</p> <p>4 A No.</p> <p>5 Q Do you know what information the</p> <p>6 United States -- let me restate that.</p> <p>7 Do you know as of April 2017</p> <p>8 what information Volkswagen had provided to</p> <p>9 the United States Department of Justice</p> <p>10 about Mr. Johnson's knowledge of diesel</p> <p>11 emissions issues?</p> <p>12 A No.</p> <p>13 Q Do you know as of April 2017</p> <p>14 what information Volkswagen had provided to</p> <p>15 the United States Department of Justice</p> <p>16 about discussions between Mr. Johnson and</p> <p>17 Mr. Horn?</p> <p>18 A Specifically, no.</p> <p>19 Q And what's the basis for your</p> <p>20 understanding of Mr. Stuart Johnson's</p> <p>21 involvement in the Volkswagen's diesel</p> <p>22 emissions issues?</p> <p>23 A Just that he had a conversation</p> <p>24 with Mr. Horn, which if it's accurately</p> <p>25 reported to me would have certainly put</p>

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<p style="text-align: center;">Freeh</p> <p>1 Mr. Horn on notice that there were defeat</p> <p>2 devices being employed and that was, of</p> <p>3 course, inconsistent with his testimony in</p> <p>4 front of the Congress.</p> <p>5 Q And what information -- let me</p> <p>6 restate that.</p> <p>7 Who reported to you information</p> <p>8 about what Mr. Johnson had told Mr. Horn</p> <p>9 about diesel emissions issues?</p> <p>10 A Mr. Heather.</p> <p>11 Q And what did Mr. Heather tell</p> <p>12 you?</p> <p>13 MR. HEATHER: Objection.</p> <p>14 Privileged.</p> <p>15 MR. GIUFFRA: Well, if he's</p> <p>16 relying on that information in forming</p> <p>17 his opinion, it's no longer</p> <p>18 privileged.</p> <p>19 A I'm not relying on that</p> <p>20 information. As you know, it's not in the</p> <p>21 report.</p> <p>22 My opinion is based just on the</p> <p>23 four corners of the Schmidt e-mail, which I</p> <p>24 believe is more than sufficient to</p> <p>25 attribute knowledge -- this is 2014 -- to</p>	<p style="text-align: center;">Freeh</p> <p>1 Q Do you know the scope of work</p> <p>2 that was done by the West Virginia</p> <p>3 investigators?</p> <p>4 A No.</p> <p>5 Q Do you know --</p> <p>6 A I know they did scientific</p> <p>7 testing and reporting.</p> <p>8 Q Do you know what the extent of</p> <p>9 that testing was?</p> <p>10 A No.</p> <p>11 Q Do you know how many cars they</p> <p>12 tested?</p> <p>13 A No.</p> <p>14 Q Do you know how many Volkswagen</p> <p>15 vehicles were tested?</p> <p>16 A No.</p> <p>17 Q Do you know how that testing was</p> <p>18 done?</p> <p>19 A No.</p> <p>20 Q Do you know whether that testing</p> <p>21 was done pursuant to a method that was</p> <p>22 relied upon by the EPA in making emissions</p> <p>23 determinations?</p> <p>24 A It's nothing to do with the</p> <p>25 scope of my review or opinion, as you know.</p>
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<p style="text-align: center;">Freeh</p> <p>1 Mr. Horn and the general counsel that there</p> <p>2 were very, very serious issues and they</p> <p>3 looked at options to not disclose and to</p> <p>4 frustrate the investigations.</p> <p>5 Q Do you know anything about what</p> <p>6 Mr. Horn did between the time he received</p> <p>7 that May 15, 2014 e-mail and the November</p> <p>8 18 -- let me restate that -- and the</p> <p>9 September 18, 2015 notice of violation?</p> <p>10 A No.</p> <p>11 Q Do you know anything about any</p> <p>12 communications between anyone at Volkswagen</p> <p>13 and the Department of Environmental</p> <p>14 Protection about something called the ICCT</p> <p>15 study?</p> <p>16 A I do not.</p> <p>17 Q Do you know anything about the</p> <p>18 ICCT study?</p> <p>19 A No.</p> <p>20 Q Sometimes called the West</p> <p>21 Virginia study?</p> <p>22 A No. Well, I mean, I know that</p> <p>23 that was the predication for the initial</p> <p>24 reporting and disclosures and inquiries and</p> <p>25 investigations.</p>	<p style="text-align: center;">Freeh</p> <p>1 Q Okay.</p> <p>2 Do you know what the knowledge</p> <p>3 was of the United States Department of</p> <p>4 Environmental Protection and the California</p> <p>5 Resources Board with respect to the West</p> <p>6 Virginia study?</p> <p>7 MR. HEATHER: Objection to form.</p> <p>8 A No.</p> <p>9 Q You keep saying that Judge Cox</p> <p>10 asked a specific question about the extent</p> <p>11 to which there was senior management</p> <p>12 knowledge of the diesel emissions issues</p> <p>13 during the, I guess the earlier -- I guess</p> <p>14 this is the March sentencing hearing?</p> <p>15 A I think it was at the actual</p> <p>16 sentencing in April.</p> <p>17 Q Okay.</p> <p>18 Do you remember him putting a</p> <p>19 specific question to either the government</p> <p>20 or to Volkswagen about what the government</p> <p>21 and/or Volkswagen knew about the</p> <p>22 involvement of senior management?</p> <p>23 A No. I mean we can quote his</p> <p>24 statement. I don't know whether you'd call</p> <p>25 it a question or a statement.</p>

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<p style="text-align: right;">Page 158</p> <p style="text-align: center;">Freeh</p> <p>1                   What he said is, I would hope</p> <p>2   that somebody would disclose -- obviously</p> <p>3   to him, is the way I read his transcript --</p> <p>4   whether there was upper management</p> <p>5   involvement, and I hope the Department of</p> <p>6   Justice and the German authorities can find</p> <p>7   that out.</p> <p>8           Q     If you'd just turn to page 12 of</p> <p>9   your expert report. Is the quote you're</p> <p>10   referring to under paragraph 8(b)?</p> <p>11          A     Yes.</p> <p>12          Q     I'll read it: "This is a case</p> <p>13   of deliberate massive fraud" --</p> <p>14          A     Yeah, that's it.</p> <p>15          Q     -- "perpetrated by Volkswagen</p> <p>16   management," right?</p> <p>17          A     Yes.</p> <p>18          Q     Do you see that?</p> <p>19                 So at least as of that point,</p> <p>20   Judge Cox understood that this was a case</p> <p>21   of deliberate massive fraud perpetrated by</p> <p>22   Volkswagen management, right?</p> <p>23                 Do you see that?</p> <p>24          A     That's what he said.</p> <p>25          Q     And then he says: "We don't</p>	<p style="text-align: right;">Page 160</p> <p style="text-align: center;">Freeh</p> <p>1           A     Not just that. And then at</p> <p>2   other points at the sentencing, you know,</p> <p>3   he talks about how the little guy, I think</p> <p>4   is the phrase he uses, you know, is the</p> <p>5   sort of the punching bag here, not the more</p> <p>6   senior people.</p> <p>7                 So it's -- so, you know, it's</p> <p>8   interspersed throughout the sentencing that</p> <p>9   he's very interested and very concerned as</p> <p>10   to whether there was upper management</p> <p>11   involvement.</p> <p>12          Q     Well, is that the quote, the two</p> <p>13   quotes you have on page 11 of your expert</p> <p>14   report under 1 and 2?</p> <p>15          A     Yes, it would be those.</p> <p>16          Q     And then he says: "Hopefully,</p> <p>17   the DOJ probably, probably most</p> <p>18   importantly, hopefully the German</p> <p>19   government will do its duty and find out</p> <p>20   and prosecute those who are responsible for</p> <p>21   this massive fraud, this deliberate massive</p> <p>22   fraud."</p> <p>23                 Right?</p> <p>24          A     That's what he said.</p> <p>25          Q     And, in fact, isn't it the case</p>
<p style="text-align: right;">Page 159</p> <p style="text-align: center;">Freeh</p> <p>1   know how far up the corporate ladder it</p> <p>2   goes."</p> <p>3                 Do you see that?</p> <p>4          A     Yeah, and then he continues in</p> <p>5   another sentence.</p> <p>6          Q     We're just going to go sentence</p> <p>7   by sentence. That's what he said, right?</p> <p>8          A     Yes.</p> <p>9          Q     Now, is that a question -- did</p> <p>10   he ask a question like I want to know how</p> <p>11   far up the corporate ladder it goes before</p> <p>12   I sentence Volkswagen?</p> <p>13                 MR. HEATHER: Object to the</p> <p>14   form.</p> <p>15          A     Well, he didn't ask a specific</p> <p>16   question, but my view is if you take his</p> <p>17   whole statement, he was clearly inquiring</p> <p>18   whether there was knowledge of involvement</p> <p>19   of upper management.</p> <p>20          Q     Based on the -- and your belief</p> <p>21   that there was an inquiry by Judge Cox</p> <p>22   about the knowledge of senior management is</p> <p>23   based on the quotation that you have on</p> <p>24   page 12 of your expert report under</p> <p>25   paragraph little (b)?</p>	<p style="text-align: right;">Page 161</p> <p style="text-align: center;">Freeh</p> <p>1   that Mr. Winterkorn has been indicted in</p> <p>2   Germany?</p> <p>3          A     Yeah. He's also been charged in</p> <p>4   the U.S.</p> <p>5          Q     Both places, right?</p> <p>6          A     Correct.</p> <p>7          Q     You don't have any understanding</p> <p>8   sitting here today the extent to which</p> <p>9   Volkswagen has provided information to</p> <p>10   German prosecutors, right?</p> <p>11          A     No.</p> <p>12          Q     Sitting here today, are you</p> <p>13   aware of any complaints stated publicly by</p> <p>14   the United States Department of Justice</p> <p>15   about Volkswagen's cooperation in the</p> <p>16   diesel emissions case?</p> <p>17          A     No.</p> <p>18          Q     Sitting here today, are you</p> <p>19   aware of any complaints stated by German</p> <p>20   prosecutors about Volkswagen's cooperation</p> <p>21   in diesel emissions matters?</p> <p>22          A     No.</p> <p>23          Q     Now, you would agree with me</p> <p>24   that the Fifth Superseding Indictment</p> <p>25   states allegations, right?</p>

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<p>Freeh</p> <p>1 A Every indictment states</p> <p>2 allegations.</p> <p>3 Q Those are not proven facts,</p> <p>4 right?</p> <p>5 A Correct.</p> <p>6 Q And the mere fact that Martin</p> <p>7 Winterkorn has been indicted in the U.S.</p> <p>8 doesn't mean, as a matter of fact, that he</p> <p>9 knew about the diesel emissions issues,</p> <p>10 right?</p> <p>11 A No, but that doesn't have</p> <p>12 anything to do with responding to what the</p> <p>13 judge clearly asked about at the sentencing</p> <p>14 hearing.</p> <p>15 Q When you say clearly asked,</p> <p>16 that's the statement "we don't know how far</p> <p>17 up the corporate ladder it goes"?</p> <p>18 A Yeah. The judge was intensely</p> <p>19 interested in a very relevant issue to</p> <p>20 sentencing, specifically whether upper</p> <p>21 management was involved or not, and he</p> <p>22 expressed that, in my opinion, very clearly</p> <p>23 to the parties.</p> <p>24 Q Now, you don't know when the</p> <p>25 Department of Justice believed it had</p>	<p>Freeh</p> <p>1 find that very incredible.</p> <p>2 Q Do you believe that David</p> <p>3 Geanakopoulos, the general counsel of</p> <p>4 Volkswagen Group of America, knew about the</p> <p>5 existence of defeat devices in Volkswagen</p> <p>6 vehicles as of the time he received the</p> <p>7 Schmidt memo?</p> <p>8 A Clearly put on notice, yes.</p> <p>9 Q Okay.</p> <p>10 So your view is that the Schmidt</p> <p>11 memo put Mr. Geanakopoulos on notice of the</p> <p>12 existence of defeat devices in the</p> <p>13 Volkswagen vehicles?</p> <p>14 A Certainly put him on notice to</p> <p>15 inquire and find out, which was not a very</p> <p>16 big secret in the company to find out.</p> <p>17 Q Well, do you know what steps</p> <p>18 Mr. Geanakopoulos took after he received</p> <p>19 that memo?</p> <p>20 A No, I don't.</p> <p>21 Q He has not been indicted, right?</p> <p>22 A He's not been indicted.</p> <p>23 Q And with respect to Martin</p> <p>24 Winterkorn, are you aware of whether he</p> <p>25 read the attachment to the Schmidt memo?</p>
Page 163	Page 165
<p>Freeh</p> <p>1 sufficient evidence to charge</p> <p>2 Dr. Winterkorn?</p> <p>3 A You mean at what early point,</p> <p>4 no.</p> <p>5 Q What is the best piece of</p> <p>6 evidence that you're aware of that</p> <p>7 Dr. Winterkorn knew about the diesel</p> <p>8 emissions fraud?</p> <p>9 A I don't know of any specific</p> <p>10 evidence. I know what the indictment</p> <p>11 recites, their allegations, and it was a</p> <p>12 sufficient basis for the government under</p> <p>13 its guidelines to return a charge, criminal</p> <p>14 charge.</p> <p>15 Q Do you know what -- do you</p> <p>16 believe that -- do you believe that Michael</p> <p>17 Horn, the CEO of Volkswagen Group of</p> <p>18 America, knew about the diesel emissions</p> <p>19 issues?</p> <p>20 A The clear inference from the</p> <p>21 Schmidt e-mail going to him is that he was</p> <p>22 on notice as the CEO of the company.</p> <p>23 And the idea that he didn't know</p> <p>24 what a defeat device was or whether it was</p> <p>25 installed when he talked to Congress, I</p>	<p>Freeh</p> <p>1 A Don't know what he read.</p> <p>2 Q Okay.</p> <p>3 You have no idea what</p> <p>4 information he read, right?</p> <p>5 A No.</p> <p>6 Q You don't know any -- you have</p> <p>7 no knowledge sitting here today what</p> <p>8 information was told to Mr. Winterkorn</p> <p>9 about whether there were defeat devices in</p> <p>10 Volkswagen vehicles?</p> <p>11 A I don't know what he knows,</p> <p>12 correct.</p> <p>13 Q And you don't know what Mr. Horn</p> <p>14 knows other than he received this May 15</p> <p>15 memo?</p> <p>16 A Yes.</p> <p>17 MR. HEATHER: Object to the</p> <p>18 form. Misstates testimony.</p> <p>19 BY MR. GIUFFRA:</p> <p>20 Q Now, do you know sitting here</p> <p>21 today what actions Mr. Horn and</p> <p>22 Geanakopoulos took after receiving the</p> <p>23 Schmidt memo?</p> <p>24 A I know Mr. Horn testified to the</p> <p>25 Congress.</p>

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<p>Freeh</p> <p>1 Q What did he testify to -- what</p> <p>2 is your understanding of what he testified</p> <p>3 to?</p> <p>4 A He said he didn't learn about</p> <p>5 any of this until the September 2015</p> <p>6 disclosures to CARB by the company.</p> <p>7 Q Do you know when Volkswagen</p> <p>8 hired Kirkland &amp; Ellis?</p> <p>9 A No.</p> <p>10 Q You know, I have a question. On</p> <p>11 page 18 of your expert report --</p> <p>12 A Yes.</p> <p>13 Q Do you see -- that's your</p> <p>14 signature at the bottom of it, right?</p> <p>15 A Yes.</p> <p>16 Q Was the expert report prepared</p> <p>17 on Mr. Heather's computer system?</p> <p>18 A Well, it was -- I think it was</p> <p>19 drafted on that, sent to me, and then I</p> <p>20 made some changes on my own system.</p> <p>21 Q And then it appears that this --</p> <p>22 was this signature page PDF'd by you to</p> <p>23 Mr. Heather's office?</p> <p>24 A I don't recall.</p> <p>25 Q Do you recall whether when you</p>	<p>Freeh</p> <p>1 Q You signed it in his office?</p> <p>2 A Yes.</p> <p>3 Q Okay.</p> <p>4 MR. GIUFFRA: Let's mark this --</p> <p>5 I guess do we have to -- let's mark</p> <p>6 this as whatever number we're up to,</p> <p>7 200. This is Exhibit 25 to your</p> <p>8 expert report.</p> <p>9 (Exhibit 200, Exhibit to Freeh</p> <p>10 Expert Report, marked for</p> <p>11 Identification, as of this date.)</p> <p>12 BY MR. GIUFFRA:</p> <p>13 Q All right. I've just handed you</p> <p>14 Exhibit 200, which is Exhibit 25 of your</p> <p>15 expert report.</p> <p>16 A Yes.</p> <p>17 Q Okay.</p> <p>18 And your recollection is that I</p> <p>19 provided a copy of this document to you</p> <p>20 back in January 2016?</p> <p>21 A Yes, I think so.</p> <p>22 Q And you would consider that this</p> <p>23 document is probably one of the linchpins</p> <p>24 of your expert report in terms of the</p> <p>25 knowledge of senior management at</p>
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<p>Freeh</p> <p>1 signed the document you had the full expert</p> <p>2 report in front of you?</p> <p>3 A Yes, I did.</p> <p>4 Q Okay.</p> <p>5 Because it appears that page 18,</p> <p>6 which is where your signature appears,</p> <p>7 looks different than the other pages in the</p> <p>8 expert report.</p> <p>9 Do you see that?</p> <p>10 A Well, the part under conclusion</p> <p>11 looks different than the rest of the text.</p> <p>12 Q Well, no, I'm just looking at</p> <p>13 page 18. It just looks different in terms</p> <p>14 of the typeface, in terms of -- I mean the</p> <p>15 darkness of the typeface and whether it's</p> <p>16 sort of straight and where the top of the</p> <p>17 page is compared to the rest of the</p> <p>18 document.</p> <p>19 So my question is, do you recall</p> <p>20 faxing the signature engage or PDF'g the</p> <p>21 signature page to Mr. Heather's office?</p> <p>22 A I think I was out in California</p> <p>23 when I signed it. Yes, I was in</p> <p>24 California. I was in Los Angeles in his</p> <p>25 office. So I signed it in his office.</p>	<p>Freeh</p> <p>1 Volkswagen?</p> <p>2 A Yeah, I wouldn't call it the</p> <p>3 linchpin, but it's certainly, as I</p> <p>4 described in my testimony today, a basis</p> <p>5 for the opinion I've made.</p> <p>6 Q And are you aware of another</p> <p>7 document that is referenced in your expert</p> <p>8 report that's more important than Exhibit</p> <p>9 25 with respect to the question of senior</p> <p>10 management knowledge of Volkswagen of the</p> <p>11 diesel emissions issue?</p> <p>12 A No, I mean except for the</p> <p>13 superseding indictment, the Fifth</p> <p>14 Superseding Indictment.</p> <p>15 Again, I don't know when the</p> <p>16 government made those determinations, but</p> <p>17 it's clearly based on events that happened</p> <p>18 well before the plea and the sentencing.</p> <p>19 Q And, obviously, the indictment</p> <p>20 itself is not evidence, we've established</p> <p>21 that.</p> <p>22 So in terms of something that's</p> <p>23 actually evidence, would it be fair to say</p> <p>24 that this Exhibit 25 to your expert report</p> <p>25 is the best document reflecting senior</p>



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<p>Freeh</p> <p>1 in the 2.0 liter.</p> <p>2 Q But you would agree with me you</p> <p>3 just conceded that the memo doesn't say</p> <p>4 that there were defeat devices in TDI</p> <p>5 vehicles.</p> <p>6 A The memo does not say that</p> <p>7 specifically, correct.</p> <p>8 Q Now, down at paragraph 6, you</p> <p>9 say that "Mr. Horn and Mr. Geanacopoulos</p> <p>10 participated in the coverup."</p> <p>11 Do you see that?</p> <p>12 A Yes.</p> <p>13 Q Do you believe that Mr. Horn</p> <p>14 participated in the coverup?</p> <p>15 A Yes.</p> <p>16 Q And what was the coverup that he</p> <p>17 participated in?</p> <p>18 A Well, I believe that they were</p> <p>19 knowledgeable -- my opinion -- they were</p> <p>20 knowledgeable well before September 2015 in</p> <p>21 the defeat devices and no disclosure or</p> <p>22 attempt to disclose that or stop the sale</p> <p>23 of the vehicles until September of 2015</p> <p>24 when CARB intervened.</p> <p>25 Q Well, again, I think you</p>	<p>Freeh</p> <p>1 A Same thing.</p> <p>2 Q And so you don't know sitting</p> <p>3 here today when EPA made the judgment there</p> <p>4 were defeat devices in VW vehicles, right?</p> <p>5 A Right.</p> <p>6 Q And you don't know when CARB</p> <p>7 made that judgment, right?</p> <p>8 A Correct.</p> <p>9 Q And you don't know what</p> <p>10 significance CARB placed on the West</p> <p>11 Virginia study, correct?</p> <p>12 A No, I don't know.</p> <p>13 Q And you don't know what</p> <p>14 significance EPA placed on the West</p> <p>15 Virginia study, right?</p> <p>16 A Correct.</p> <p>17 Q The information about the</p> <p>18 certified preowned vehicles in your expert</p> <p>19 report, which was found on pages 13 through</p> <p>20 17 -- do you see that?</p> <p>21 A Yes.</p> <p>22 Q That all came from your</p> <p>23 counsel -- well, from counsel for</p> <p>24 plaintiffs, right?</p> <p>25 A Well, no. I mean the documents</p>
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<p>Freeh</p> <p>1 testified you don't know what information</p> <p>2 they disclosed to CARB or EPA before</p> <p>3 September 2014, right?</p> <p>4 A No. Specifically, I don't know.</p> <p>5 Q And you think Mr. Geanacopoulos</p> <p>6 participated in a coverup?</p> <p>7 A My answer and my opinion is</p> <p>8 based on this e-mail and notice, which goes</p> <p>9 back to 2014, May of 2014, it seems -- it</p> <p>10 seems to defy all my experience with</p> <p>11 general counsels and CEOs and companies and</p> <p>12 governance that they would not have</p> <p>13 immediately determined after receiving this</p> <p>14 memo, if not before, that there were</p> <p>15 specific defeat devices both in the 2.0</p> <p>16 liters and the 3.0 liters.</p> <p>17 Q Do you know whether the</p> <p>18 information that's contained in Exhibit 25</p> <p>19 of your expert report about the West</p> <p>20 Virginia study was disclosed to CARB or EPA</p> <p>21 as of May 2014?</p> <p>22 A As I said before, I don't know</p> <p>23 what they disclosed to CARB.</p> <p>24 Q Do you know when CARB -- what</p> <p>25 about EPA, you don't know?</p>	<p>Freeh</p> <p>1 and the data and the information came from</p> <p>2 them, but these are my conclusions based on</p> <p>3 assumed facts.</p> <p>4 Q Based on assumed facts.</p> <p>5 Similarly, the other information</p> <p>6 in your expert report, to the extent</p> <p>7 there's documents identified, that all came</p> <p>8 from counsel or plaintiffs, right?</p> <p>9 A The documents, yes.</p> <p>10 Q Do you know how many people have</p> <p>11 opted out of the Volkswagen class action</p> <p>12 settlement?</p> <p>13 A No.</p> <p>14 Q Do you know how many vehicles</p> <p>15 Volkswagen has purchased pursuant to that</p> <p>16 class action settlement?</p> <p>17 A No. I mean I'm familiar with</p> <p>18 the documents that I report in my opinion,</p> <p>19 you know, 500 sold in California, less than</p> <p>20 100 sold outside, brought into</p> <p>21 California -- but in terms of the total</p> <p>22 numbers, I don't know.</p> <p>23 Q Okay.</p> <p>24 In terms of some of the</p> <p>25 judgments you make in your opinion about,</p>

<p style="text-align: right;">Page 186</p> <p style="text-align: center;">Freeh</p> <p>1 for example, you know, whether people</p> <p>2 participated in a coverup, that's based on</p> <p>3 your review of documents, right?</p> <p>4 A Yeah, my review of the documents</p> <p>5 that were all public and which I reviewed</p> <p>6 to make my opinion.</p> <p>7 Q And why do you believe that you</p> <p>8 have some expert opinion to provide to the</p> <p>9 jury in this case about what your review of</p> <p>10 documents that could be admitted into</p> <p>11 evidence mean with respect to the knowledge</p> <p>12 of people at Volkswagen AG about the diesel</p> <p>13 emissions issues?</p> <p>14 A I think I can give an opinion as</p> <p>15 to what, if anything, needs to be disclosed</p> <p>16 to calculate the guidelines accurately,</p> <p>17 which I don't think was done here, and then</p> <p>18 subsequently what is required to be</p> <p>19 disclosed and reported to the Court at</p> <p>20 sentencing, particularly when the Court</p> <p>21 specifically inquires about a subject</p> <p>22 matter.</p> <p>23 Q And again, that goes back to the</p> <p>24 statement "we don't know how far up the</p> <p>25 corporate ladder it goes."</p>	<p style="text-align: right;">Page 188</p> <p style="text-align: center;">Freeh</p> <p>1 request at sentencing. It would be highly</p> <p>2 unusual, in my experience, for a prosecutor</p> <p>3 to sit there quietly if, in fact, they knew</p> <p>4 that there was upper management</p> <p>5 involvement.</p> <p>6 Q And your understanding of this</p> <p>7 so-called upper management involvement, as</p> <p>8 least as far as you know, is from Exhibit</p> <p>9 25 of your expert report and you don't know</p> <p>10 when that was provided to the government?</p> <p>11 MR. HEATHER: Objection.</p> <p>12 Misstates the testimony.</p> <p>13 A Well, that's not what I said.</p> <p>14 But also the Winterkorn indictment and when</p> <p>15 that was known to the government. We don't</p> <p>16 know exactly when that occurred.</p> <p>17 Q Would it be fair to say in your</p> <p>18 experience that criminal investigations</p> <p>19 involve both review of documents and</p> <p>20 interviewing witnesses, right?</p> <p>21 A And many other things, yes.</p> <p>22 Q And you don't know the timing of</p> <p>23 whether -- of when DOJ interviewed</p> <p>24 witnesses that it relied upon in bringing</p> <p>25 the Fifth Superseding Indictment, right?</p>
<p style="text-align: right;">Page 187</p> <p style="text-align: center;">Freeh</p> <p>1 You view that as a specific</p> <p>2 request for information about all the</p> <p>3 information that the government has learned</p> <p>4 from Volkswagen about corporate knowledge?</p> <p>5 A No. I answered that before and</p> <p>6 it's a complex question.</p> <p>7 What I said, I think -- I'll</p> <p>8 repeat it again -- is that based on all the</p> <p>9 judge's comments at the sentencing, not</p> <p>10 just that one, but clearly that one, he was</p> <p>11 inquiring whether or not there was</p> <p>12 involvement of upper management and</p> <p>13 directly told the parties how important</p> <p>14 that was.</p> <p>15 And as somebody who knows how</p> <p>16 the guidelines works, and particularly on</p> <p>17 the judicial side, it seemed to me basic</p> <p>18 protocol and response that somebody should</p> <p>19 have told him what was going on or upper</p> <p>20 management's involvement as I believe was</p> <p>21 known to the company at that point.</p> <p>22 Q And potentially DOJ?</p> <p>23 A And potentially DOJ. My</p> <p>24 conclusion that DOJ didn't know is that</p> <p>25 they stood silent when the judge made that</p>	<p style="text-align: right;">Page 189</p> <p style="text-align: center;">Freeh</p> <p>1 A Correct.</p> <p>2 Q Now, do you plan to testify at</p> <p>3 trial in this case about whether any senior</p> <p>4 management folks at Volkswagen had knew</p> <p>5 about the diesel emissions issues?</p> <p>6 A No. I think I would give an</p> <p>7 opinion as to when and how they were put on</p> <p>8 notice with respect to the defeat devices.</p> <p>9 Q And which -- just for the</p> <p>10 record, which Volkswagen senior management</p> <p>11 do you intend to testify at trial had</p> <p>12 knowledge of diesel emissions issues, and</p> <p>13 when -- that's complicated. Let me restate</p> <p>14 it.</p> <p>15 A Yeah, that is complicated.</p> <p>16 Q Okay, let me restate it.</p> <p>17 At trial, when do you plan to</p> <p>18 opine as to when Volkswagen senior</p> <p>19 management had knowledge of the diesel</p> <p>20 emissions issues?</p> <p>21 MR. HEATHER: Object to form.</p> <p>22 A Mr. Horn certainly when he</p> <p>23 received the -- or immediately after he</p> <p>24 received the Schmidt memo. There is,</p> <p>25 again, the conversations I related, which I</p>



<p style="text-align: right;">Page 190</p> <p style="text-align: center;">Freeh</p> <p>1 didn't rely upon in my report, which detail</p> <p>2 the conversation the following year, 2015,</p> <p>3 between Johnson and Horn.</p> <p>4 Q And those are conversations that</p> <p>5 your client -- that counsel for plaintiffs</p> <p>6 disclosed to you?</p> <p>7 A Yes. I haven't done the</p> <p>8 research and verified those myself, but if</p> <p>9 they're accurate, that would be the second</p> <p>10 time when he was clearly put on notice that</p> <p>11 there were defeat devices in his vehicles.</p> <p>12 Q Is there any reference to Stuart</p> <p>13 Johnson in your expert report?</p> <p>14 A No.</p> <p>15 Q So do you plan to testify about</p> <p>16 matters that are not specified in your</p> <p>17 expert report at trial?</p> <p>18 A Only if asked about them.</p> <p>19 Q Okay.</p> <p>20 So what, specifically, do you</p> <p>21 intend to testify about Stuart Johnson and</p> <p>22 his testimony at trial?</p> <p>23 A Well, I don't know. It depends</p> <p>24 on who asks me a question and what the</p> <p>25 judge would permit.</p>	<p style="text-align: right;">Page 192</p> <p style="text-align: center;">Freeh</p> <p>1 form.</p> <p>2 A Well, I believe on the basis of</p> <p>3 this memo he was on notice and would have</p> <p>4 found that out within a very short period</p> <p>5 if he exercised common interest and due</p> <p>6 diligence.</p> <p>7 Q But as far as you know, from the</p> <p>8 face of the memo, you've previously stated</p> <p>9 it doesn't say there were defeat devices in</p> <p>10 the vehicles, right?</p> <p>11 MR. HEATHER: Objection to form.</p> <p>12 A It doesn't say that</p> <p>13 specifically.</p> <p>14 Q Okay.</p> <p>15 Now with respect to anyone else</p> <p>16 other than Mr. Horn you intend to testify</p> <p>17 about?</p> <p>18 A No. It depends what I'm asked</p> <p>19 about based on my opinion as you see in the</p> <p>20 report.</p> <p>21 Q Do you intend to testify about</p> <p>22 what your understanding is of</p> <p>23 Mr. Geanacopoulos' knowledge of defeat</p> <p>24 devices as of any point in time?</p> <p>25 A Well, I'd have the same opinion.</p>
<p style="text-align: right;">Page 191</p> <p style="text-align: center;">Freeh</p> <p>1 Q Well, you know, you sat as a</p> <p>2 judge. Do you think it's consistent with</p> <p>3 the federal rules for an expert to testify</p> <p>4 about matters that are not disclosed in the</p> <p>5 expert's report?</p> <p>6 MR. HEATHER: Objection to form.</p> <p>7 Calls for an expert opinion. Outside</p> <p>8 the scope of his report.</p> <p>9 A Well, I know that judges</p> <p>10 frequently ask experts questions that go</p> <p>11 well beyond their written opinions, and</p> <p>12 cross-examination also would bring that</p> <p>13 out. It depends on the parties and the</p> <p>14 Court.</p> <p>15 Q Well, other than Mr. Horn, can</p> <p>16 you think of -- so your testimony is</p> <p>17 Mr. Horn knew about diesel emissions issues</p> <p>18 in May 2014?</p> <p>19 A Had reason to know about them,</p> <p>20 yes.</p> <p>21 Q But you don't have a basis for</p> <p>22 testifying he knew there were defeat</p> <p>23 devices in the vehicles as of May 2014,</p> <p>24 right?</p> <p>25 MR. HEATHER: Objection to the</p>	<p style="text-align: right;">Page 193</p> <p style="text-align: center;">Freeh</p> <p>1 If you were the general counsel and you</p> <p>2 received a memo like that, it shouldn't</p> <p>3 take you very long to do what you're</p> <p>4 supposed to do in that circumstance and</p> <p>5 find out what the facts are.</p> <p>6 Q Okay.</p> <p>7 Other than Mr. Geanacopoulos and</p> <p>8 Mr. Horn, do you plan to make any</p> <p>9 statements about the knowledge of any other</p> <p>10 Volkswagen management with respect to</p> <p>11 diesel emissions issues at trial in this</p> <p>12 case?</p> <p>13 A The question is, you know, what</p> <p>14 the company knew about Mr. Winterkorn and</p> <p>15 when they knew it, and I don't have the</p> <p>16 inside view of that.</p> <p>17 But the superseding indictment</p> <p>18 certainly represents information that was</p> <p>19 not before the sentencing judge, which is</p> <p>20 really the basis of my expert opinion that</p> <p>21 the Court did not have all the information</p> <p>22 with respect to relevant factors at</p> <p>23 sentencing, particularly the involvement of</p> <p>24 upper management, which he specifically and</p> <p>25 repeatedly asked about at the sentencing.</p>

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<p style="text-align: center;">Freeh</p> <p>1 Doess is the general counsel of Volkswagen</p> <p>2 AG?</p> <p>3 A Yes, I do.</p> <p>4 Q And is the telephone number</p> <p>5 202-215-8321, is that your telephone</p> <p>6 number?</p> <p>7 A Yes.</p> <p>8 Q And it appears that you sent --</p> <p>9 does this refresh your -- why don't you</p> <p>10 read the e-mail.</p> <p>11 A Yes, I've read this.</p> <p>12 Q Does this refresh your</p> <p>13 recollection that you reached out to</p> <p>14 Volkswagen in December 2016 and asked to be</p> <p>15 considered as the monitor for the</p> <p>16 Volkswagen criminal case?</p> <p>17 MR. HEATHER: Objection to form.</p> <p>18 A Yeah. I wouldn't say I reached</p> <p>19 out for him, though. I was following up a</p> <p>20 conversation where he broached the subject</p> <p>21 back in January.</p> <p>22 MR. HEATHER: Excuse me, what</p> <p>23 exhibit number is this?</p> <p>24 MR. GIUFFRA: 201.</p> <p>25 THE WITNESS: 201.</p>	<p style="text-align: center;">Freeh</p> <p>1 manner.</p> <p>2 Q When you say efficient, what do</p> <p>3 you mean?</p> <p>4 A Well, you reached the settlement</p> <p>5 with the government, you know, in less than</p> <p>6 a year after the investigation started,</p> <p>7 that seems to be with these large cases</p> <p>8 very fast.</p> <p>9 Q And in your text to Manfred, you</p> <p>10 write: "Congratulations on moving this</p> <p>11 complex matter along to a final solution."</p> <p>12 What do you mean by that?</p> <p>13 A Well, that the case was</p> <p>14 progressing in terms of a settlement. When</p> <p>15 I left conversations with Manfred in either</p> <p>16 January or February, I was aware that</p> <p>17 contacts were being made with the</p> <p>18 government. I didn't know what the</p> <p>19 substance was, but they seemed to be moving</p> <p>20 forward to some kind of resolution.</p> <p>21 Q In your experience does service</p> <p>22 as a monitor, is that an economically</p> <p>23 remunerative matter typically for the</p> <p>24 monitor?</p> <p>25 A Yes.</p>
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<p style="text-align: center;">Freeh</p> <p>1 BY MR. GIUFFRA:</p> <p>2 Q Now between January 2016 and</p> <p>3 December 2016, would it be fair to say</p> <p>4 there was a lot of press about the</p> <p>5 Volkswagen case?</p> <p>6 A Yes.</p> <p>7 Q Do you recall reading that</p> <p>8 press?</p> <p>9 A I read some of it, yes.</p> <p>10 Q And did you have any view with</p> <p>11 respect to the speed with which Volkswagen</p> <p>12 was able to reach settlements with the</p> <p>13 Department of Justice and civil plaintiffs?</p> <p>14 A No. I mean as these large cases</p> <p>15 go, I think it seemed to go quicker than I</p> <p>16 would have expected in a big complex case.</p> <p>17 Q I mean would it be fair to say</p> <p>18 that in terms of reaching a settlement in</p> <p>19 the civil case, that Volkswagen moved quite</p> <p>20 quickly to settle the case that was brought</p> <p>21 by consumers in a class action?</p> <p>22 A Yeah. Again, I don't know the</p> <p>23 actual timeframe. My previous answer was</p> <p>24 as to the criminal case. My view was that</p> <p>25 it was settled in a fairly quick efficient</p>	<p style="text-align: center;">Freeh</p> <p>1 Q And typically a monitorship in a</p> <p>2 case like Volkswagen would involve tens of</p> <p>3 millions of dollars in fees, correct?</p> <p>4 A It could, yes.</p> <p>5 Q I mean you were the monitor in</p> <p>6 Daimler, right?</p> <p>7 A Correct.</p> <p>8 Q What were the fees that you</p> <p>9 charged in Daimler?</p> <p>10 MR. HEATHER: Objection.</p> <p>11 A Yeah, over a period of 3 years,</p> <p>12 I'd have to go calculate them.</p> <p>13 Q Many millions of dollars, I</p> <p>14 would think?</p> <p>15 A Yes.</p> <p>16 Q And so would you say for someone</p> <p>17 who is a former government official,</p> <p>18 serving as a monitor is a plum position,</p> <p>19 right?</p> <p>20 MR. HEATHER: Object to the</p> <p>21 form.</p> <p>22 A I'd say for anyone.</p> <p>23 Q It's a plum position, right?</p> <p>24 A I don't know that I'd call it a</p> <p>25 plum position. It's a good engagement and</p>

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<p style="text-align: center;">Freeh</p> <p>1 it's a great way to practice what you've</p> <p>2 learned and known about both corporations</p> <p>3 and compliance and government</p> <p>4 investigations.</p> <p>5 Q And you would have liked to have</p> <p>6 served as the monitor for Volkswagen,</p> <p>7 right?</p> <p>8 A You know, I never actually went</p> <p>9 into the process formally. So as you</p> <p>10 know -- I mean I'm reading my statement on</p> <p>11 201, but that was in response to</p> <p>12 Volkswagen -- distinctly and clearly</p> <p>13 telling me that they would like to keep me</p> <p>14 in mind and consider me later as the</p> <p>15 monitor, which, by the way, indicated to me</p> <p>16 that they didn't see any conflict with</p> <p>17 respect to our prior conversations.</p> <p>18 But did I ever, you know -- I</p> <p>19 mean I was aware that the company asked for</p> <p>20 bids and that Larry and other people put</p> <p>21 them in. I never put them in.</p> <p>22 Q Well, in fact, isn't it the case</p> <p>23 in this e-mail that you actually sent them</p> <p>24 after this was an unsolicited text other</p> <p>25 than maybe some comment that you think was</p>	<p style="text-align: center;">Freeh</p> <p>1 Q And reaching out to me?</p> <p>2 A You know, I don't recall that,</p> <p>3 no.</p> <p>4 Q Are you aware that Sullivan &amp;</p> <p>5 Cromwell is counsel for Fiat Chrysler in</p> <p>6 their emissions counsel?</p> <p>7 A No.</p> <p>8 Q And that I'm involved as counsel</p> <p>9 to them?</p> <p>10 A No, did not know.</p> <p>11 Q And are you aware that your firm</p> <p>12 was not selected?</p> <p>13 A I know we weren't given that</p> <p>14 engagement, but I wasn't involved in the</p> <p>15 process.</p> <p>16 Q Are you aware that your name was</p> <p>17 identified in the selection materials to be</p> <p>18 the principal auditor?</p> <p>19 A I'm sorry, what do you mean the</p> <p>20 selection materials?</p> <p>21 Q The materials that were</p> <p>22 submitted by your firm --</p> <p>23 A Oh, yes. I think that's</p> <p>24 correct.</p> <p>25 Q I think it's called the Freeh</p>
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<p style="text-align: center;">Freeh</p> <p>1 made back in January, is that fair?</p> <p>2 MR. HEATHER: Objection to form.</p> <p>3 A No, it's not fair. It wasn't a</p> <p>4 comment made. He basically told me that</p> <p>5 they'd like to consider me for the</p> <p>6 monitorship, which I understood from his</p> <p>7 description was one of the reasons they</p> <p>8 didn't want me to get involved at that</p> <p>9 point.</p> <p>10 Q Do you recall reaching out to me</p> <p>11 in late 2016 about being the monitor for</p> <p>12 Volkswagen?</p> <p>13 A Very likely. We stayed in touch</p> <p>14 on that.</p> <p>15 Q Did your firm participate in the</p> <p>16 process to be named as the auditor for Fiat</p> <p>17 Chrysler?</p> <p>18 A You know, I'm not sure. It's</p> <p>19 possible we did. I'd have to go check with</p> <p>20 somebody.</p> <p>21 Q Do you recall Joe Guccione</p> <p>22 reaching out about being the monitor -- of</p> <p>23 the auditor for Fiat Chrysler?</p> <p>24 A Yeah, he would have been</p> <p>25 involved in that, yes.</p>	<p style="text-align: center;">Freeh</p> <p>1 Group?</p> <p>2 A Yes.</p> <p>3 Q Okay.</p> <p>4 So in terms of -- I want to just</p> <p>5 spend a little time going through the</p> <p>6 dealings you had with Volkswagen in late</p> <p>7 2015 into 2016.</p> <p>8 So would it be fair to say that</p> <p>9 you learned at some point in late 2015 that</p> <p>10 Ms. Hohmann-Dennhardt would be becoming a</p> <p>11 member of the Management Board of</p> <p>12 Volkswagen?</p> <p>13 A Yes. She reached out to me to</p> <p>14 tell me that.</p> <p>15 Q And how many communications did</p> <p>16 you have with Ms. Hohmann-Dennhardt about</p> <p>17 becoming, getting involved on behalf of</p> <p>18 Volkswagen in connection with the diesel</p> <p>19 emissions matters?</p> <p>20 A I had one meeting or two</p> <p>21 meetings, one in Stuttgart, I think that</p> <p>22 was in 2015, one in Wolfsburg 2016, maybe</p> <p>23 one or two telephone calls and a number of</p> <p>24 e-mails and messages, all of which I could</p> <p>25 find, we've turned over to you.</p>

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<p style="text-align: center;">Freeh</p> <p>1 Q When you visited Wolfsburg, did</p> <p>2 Volkswagen pay your expenses?</p> <p>3 A No.</p> <p>4 Q So you think the first</p> <p>5 communication would have been sometime in</p> <p>6 say November 2015?</p> <p>7 A I think November. That's when</p> <p>8 she reached out for me.</p> <p>9 Q Okay.</p> <p>10 Do you recall ever reaching out</p> <p>11 to Ms. Hohmann-Dennhardt in December 2015</p> <p>12 and advising her about the consolidation of</p> <p>13 the VW cases before Judge Charles Breyer in</p> <p>14 San Francisco?</p> <p>15 A I may have, yes.</p> <p>16 Q Do you recall advising</p> <p>17 Ms. Hohmann-Dennhardt that you thought that</p> <p>18 the consolidation of the cases before Judge</p> <p>19 Breyer was a very important development?</p> <p>20 A I may have said that, yes.</p> <p>21 Q And did you discuss with her at</p> <p>22 any point the implications of the</p> <p>23 consolidation of the VW cases before Judge</p> <p>24 Breyer?</p> <p>25 A I don't think so. I think that</p>	<p style="text-align: center;">Freeh</p> <p>1 working with Volkswagen on that case and he</p> <p>2 said thank you, he appreciated hearing</p> <p>3 that.</p> <p>4 Q Did you speak to Ms. Yates and</p> <p>5 tell her -- she was the Deputy Attorney</p> <p>6 General -- that you might be retained as a</p> <p>7 lawyer for Volkswagen to try to resolve its</p> <p>8 issues with the U.S. Government?</p> <p>9 A It was the same conversation,</p> <p>10 the same day. I was down there on another</p> <p>11 matter and I mentioned it to both of them,</p> <p>12 yes.</p> <p>13 Q Did you seek out Mr. Cruden when</p> <p>14 you were at -- when -- let me restate the</p> <p>15 question. It's a poorly-phrased question.</p> <p>16 When you met with Mr. Cruden,</p> <p>17 were you meeting with him on the BP matter</p> <p>18 or did you reach out to him about the VW</p> <p>19 matter?</p> <p>20 A The BP matter.</p> <p>21 Q Did there come a time when you</p> <p>22 reported to Ms. Hohmann-Dennhardt that both</p> <p>23 Ms. Yates and Mr. Cruden were very</p> <p>24 supportive of the idea of you being</p> <p>25 retained as a lawyer to help resolve VW's</p>
Page 227	Page 229
<p style="text-align: center;">Freeh</p> <p>1 was a piece of news I saw in the U.S. I</p> <p>2 didn't know whether she had that. So I</p> <p>3 sent it to her when I read it.</p> <p>4 Q Have you ever met Judge Breyer?</p> <p>5 A No.</p> <p>6 Q Have you ever met Steven Breyer?</p> <p>7 A No -- well, I'm sorry, I have</p> <p>8 met him, yes.</p> <p>9 Q Did you discuss with</p> <p>10 Ms. Hohmann-Dennhardt the fact that you had</p> <p>11 met Steven Breyer?</p> <p>12 A No.</p> <p>13 Q Now, did there ever come a time</p> <p>14 in -- let me restate that.</p> <p>15 In late December/January, late</p> <p>16 December 2015/January 2016, did you ever</p> <p>17 have a conversation with then Assistant</p> <p>18 Attorney General John Cruden of the</p> <p>19 environmental natural resources decision</p> <p>20 that you might be retained as a lawyer for</p> <p>21 Volkswagen to try to resolve its issues</p> <p>22 with the U.S. Government?</p> <p>23 A It was -- it was more of just a</p> <p>24 heads up to him than a conversation -- yes,</p> <p>25 I said there was a possibility I would be</p>	<p style="text-align: center;">Freeh</p> <p>1 issues with the U.S. Government?</p> <p>2 A Yes. Mr. Cruden was supportive.</p> <p>3 Q And did you advise</p> <p>4 Ms. Hohmann-Dennhardt that he was</p> <p>5 supportive?</p> <p>6 A Yes.</p> <p>7 Q Did you advise</p> <p>8 Ms. Hohmann-Dennhardt that Ms. Yates was</p> <p>9 also very supportive of the idea of you</p> <p>10 being hired as a lawyer?</p> <p>11 A Yeah, I think she was. But the</p> <p>12 conversation with John Cruden on that is</p> <p>13 much clearer to me.</p> <p>14 Q What do you remember about your</p> <p>15 conversation with John Cruden?</p> <p>16 A Well, as I said, we were there</p> <p>17 on some other matters and I mentioned to</p> <p>18 him that I might be working with Volkswagen</p> <p>19 on those matters. His reaction was very</p> <p>20 positive to that. Then he brought up the</p> <p>21 idea of working or submitting my name to</p> <p>22 Judge Breyer as the special master.</p> <p>23 Q Do you have a view as to whether</p> <p>24 the lawyers who handled the BP case -- let</p> <p>25 me restate that.</p>

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230 to 233

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<p>Freeh</p> <p>1 Do you have a view as to whether</p> <p>2 the BP case was resolved as fast as it</p> <p>3 could have been resolved?</p> <p>4 A I don't have a particular view</p> <p>5 on that. It's a complicated case and went</p> <p>6 on for a long period.</p> <p>7 Q Why do you think the BP case</p> <p>8 went on so much longer than the Volkswagen</p> <p>9 case did?</p> <p>10 MR. HEATHER: I'm going to</p> <p>11 object. You're asking him for an</p> <p>12 opinion that goes way outside the</p> <p>13 scope of his report.</p> <p>14 BY MR. GIUFFRA:</p> <p>15 Q Can you answer the question?</p> <p>16 A I don't know.</p> <p>17 Q Did you ever tell</p> <p>18 Ms. Hohmann-Dennhardt that you thought you</p> <p>19 could reach good settlements for Volkswagen</p> <p>20 in a shorter time than it took to resolve</p> <p>21 the BP cases?</p> <p>22 A Don't recall that.</p> <p>23 Q Did you ever tell</p> <p>24 Ms. Hohmann-Dennhardt that you thought you</p> <p>25 could save VW money, time and reputation by</p>	<p>Freeh</p> <p>1 Mr. Potsch?</p> <p>2 A No more than 15 minutes.</p> <p>3 Q Without disclosing any</p> <p>4 privileged communications, do you remember</p> <p>5 the topics you discussed with Mr. Potsch?</p> <p>6 A Yeah. It was only one topic.</p> <p>7 He said he was very pleased with the</p> <p>8 presentation, appreciated me coming over on</p> <p>9 my own time and expense to meet with him,</p> <p>10 but said that I'd have to discuss this with</p> <p>11 both Manfred and U.S. counsel and would I</p> <p>12 be willing to contact him when I got back</p> <p>13 to the United States, and I said yes.</p> <p>14 Q Did you ever discuss with</p> <p>15 Ms. Hohmann-Dennhardt your confidence that</p> <p>16 you could save VW very large amounts of</p> <p>17 money from legal fees to settlement costs?</p> <p>18 A I don't think it was that</p> <p>19 specific, no.</p> <p>20 Q But you definitely recall</p> <p>21 discussing with her the fact that you</p> <p>22 needed a contingent compensation provision</p> <p>23 in connection with work you might do for</p> <p>24 Volkswagen, right?</p> <p>25 A Yes.</p>
Page 231	Page 233
<p>Freeh</p> <p>1 being involved in the resolution of the VW</p> <p>2 emissions cases?</p> <p>3 A Yes, I think I said that.</p> <p>4 Q Did you ever, in any way,</p> <p>5 express any view that the BP case could</p> <p>6 have been resolved cheaper had you been</p> <p>7 more actively involved?</p> <p>8 A I don't recall that, in</p> <p>9 particular.</p> <p>10 Q Did you ever meet privately with</p> <p>11 the CEO of Volkswagen, Matthias Muller?</p> <p>12 A No, I don't believe I did. I</p> <p>13 met with the Chairman of the Supervisory</p> <p>14 Board. He came over to see me the morning</p> <p>15 after we did the meeting we talked on</p> <p>16 January 6th, but I don't believe I ever met</p> <p>17 separately with Mr. Muller.</p> <p>18 Q Okay.</p> <p>19 So you would have met with</p> <p>20 Mr. Potsch?</p> <p>21 A Potsch.</p> <p>22 Q You met with him the day after</p> <p>23 the Management Board meeting?</p> <p>24 A Yes.</p> <p>25 Q How long did you meet with</p>	<p>Freeh</p> <p>1 Q I apologize if I asked this</p> <p>2 question, but let me just be sure. Had you</p> <p>3 ever previously asked for a contingent</p> <p>4 compensation arrangement in connection with</p> <p>5 work as a lawyer?</p> <p>6 A Yes, many times.</p> <p>7 Q Have you ever asked for a</p> <p>8 contingent compensation arrangement in</p> <p>9 connection with work as a defense lawyer?</p> <p>10 A Yes.</p> <p>11 Q Do you remember any instances</p> <p>12 when you did so?</p> <p>13 A Well, a number of cases and</p> <p>14 clients, but I don't know that I should</p> <p>15 mention them.</p> <p>16 Q Okay.</p> <p>17 Now, did you ever prepare a</p> <p>18 written presentation for the Board of</p> <p>19 Management, Board of VW AG?</p> <p>20 A Yes, I did.</p> <p>21 Q And that would be a slide deck</p> <p>22 that you talked about various topics?</p> <p>23 A Correct.</p> <p>24 Q And did the topics include</p> <p>25 international and U.S. media perception of</p>

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<p>Freeh</p> <p>1 Volkswagen?</p> <p>2 A Yes.</p> <p>3 Q And did you discuss prior</p> <p>4 scandals the company had?</p> <p>5 A I'd have to look at the deck,</p> <p>6 but I did -- in preparation for the meeting</p> <p>7 in Wolfsburg with the Board of Management</p> <p>8 put together a deck, which we sent you as</p> <p>9 part of our materials.</p> <p>10 Q In the presentation that you</p> <p>11 made to the Management Board of Volkswagen,</p> <p>12 did you discuss setting up something called</p> <p>13 an Office of Special Counsel?</p> <p>14 A Yes. I think that was part of</p> <p>15 the proposal.</p> <p>16 Q And would you be the head of the</p> <p>17 Office of Special Counsel?</p> <p>18 A Yes.</p> <p>19 Q And would it be fair to say that</p> <p>20 the role of the Office of Special Counsel</p> <p>21 would be to coordinate global, criminal,</p> <p>22 and regulatory response?</p> <p>23 A To oversee everything going on</p> <p>24 in connection with emissions.</p> <p>25 Q And did you also say that you</p>	<p>Freeh</p> <p>1 early January -- well, 2015 into '16, that</p> <p>2 Ken Feinberg had been retained by</p> <p>3 Volkswagen?</p> <p>4 A Yes, I think I knew that.</p> <p>5 Q You know who Ken Feinberg is,</p> <p>6 right?</p> <p>7 A Right.</p> <p>8 Q Who is Ken Feinberg?</p> <p>9 A So Ken Feinberg is a lawyer and</p> <p>10 he's done a lot of practice in the area of</p> <p>11 claims administration. He worked on the BP</p> <p>12 case. And I just know him as a lawyer for</p> <p>13 many years.</p> <p>14 Q In your communications with</p> <p>15 Volkswagen Management Board members, did</p> <p>16 you tell them that your work on BP had</p> <p>17 saved BP several billion UK pounds?</p> <p>18 A No, I don't remember saying that</p> <p>19 at all. I think -- again, the conversation</p> <p>20 at the meeting was very, very general. I</p> <p>21 talked about the resolution, they're saving</p> <p>22 the company not just a lot of money, but</p> <p>23 getting the settlement done and behind them</p> <p>24 as a matter of corporate reputation. But</p> <p>25 we talked more about Daimler. I don't</p>
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<p>Freeh</p> <p>1 would act as a spokesperson for the</p> <p>2 company?</p> <p>3 A On the areas related to what I</p> <p>4 was doing, yes.</p> <p>5 Q And did you also tell the board</p> <p>6 that you would be a coordinator of an</p> <p>7 "effective resolution to mass claims"?</p> <p>8 A You know, I didn't go through</p> <p>9 the deck with the board. It was more of a</p> <p>10 general conversation. As far as I know,</p> <p>11 they had the deck. I didn't use it at the</p> <p>12 briefing. I didn't go through it. I had</p> <p>13 given it to Christine Hohmann-Dennhardt a</p> <p>14 few days before.</p> <p>15 But the conversation was more of</p> <p>16 a general conversation about what I could</p> <p>17 do, but focused mainly on Daimler, what I</p> <p>18 thought was the value of what we did for</p> <p>19 Daimler.</p> <p>20 Q Did you meet -- and I apologize</p> <p>21 if I asked this -- did you meet separately</p> <p>22 with Matthias Muller, the CEO, outside of</p> <p>23 the Management Board meeting?</p> <p>24 A No, I don't think I did.</p> <p>25 Q Were you aware in late December,</p>	<p>Freeh</p> <p>1 think we spoke much about BP, my</p> <p>2 recollection.</p> <p>3 Q Did you have any discussions in</p> <p>4 January 2016 about VW's desire to obtain a</p> <p>5 fast resolution of the diesel emissions</p> <p>6 issues?</p> <p>7 A Well, the Management Board</p> <p>8 clearly said they wanted to obtain a fast</p> <p>9 resolution. So we discussed that at the</p> <p>10 meeting.</p> <p>11 Q Did anyone at the Management</p> <p>12 Board say anything to you that made you not</p> <p>13 want to be a lawyer for Volkswagen?</p> <p>14 A No, not that I can recall.</p> <p>15 Q Was it your sense that the</p> <p>16 members of the Management Board were</p> <p>17 looking to move proactively to resolve the</p> <p>18 issues that the company had in the United</p> <p>19 States?</p> <p>20 A Yes.</p> <p>21 Q And that members of the</p> <p>22 Management Board wanted to try to reach</p> <p>23 settlements with U.S. regulatory</p> <p>24 authorities as fast as they could?</p> <p>25 A That's what they said, yes.</p>



<p style="text-align: right;">Page 246</p> <p style="text-align: center;">Freeh</p> <p>1 Q Now, did there ever come a time</p> <p>2 when you advised folks at Volkswagen about</p> <p>3 the mood in the United States vis-a-vis</p> <p>4 Volkswagen?</p> <p>5 MR. HEATHER: Object to the</p> <p>6 form.</p> <p>7 A It may have come up in the</p> <p>8 conversations even with the board, but I</p> <p>9 don't have a specific recollection.</p> <p>10 Q Did you have any discussions</p> <p>11 with anyone at Volkswagen where you</p> <p>12 discussed what U.S. regulators were saying</p> <p>13 about the company?</p> <p>14 MR. HEATHER: Objection to form.</p> <p>15 A During that period, I recall</p> <p>16 sending to at least Dr. Hohmann-Dennhardt,</p> <p>17 you know, press articles, things that I saw</p> <p>18 in the newspapers, because of the ongoing</p> <p>19 conversations we were having and I wanted</p> <p>20 to make sure that she had the benefit of</p> <p>21 the things I was reading.</p> <p>22 So yes, I think -- I think I</p> <p>23 would send her an article if I saw it in</p> <p>24 one of the newspapers, and I don't recall</p> <p>25 sending it to anyone else.</p>	<p style="text-align: right;">Page 248</p> <p style="text-align: center;">Freeh</p> <p>1 that we provided to you -- I don't have a</p> <p>2 copy in front of me -- but it was</p> <p>3 functioning as a counsel and advisor to the</p> <p>4 Management Board, I think it was reporting</p> <p>5 up to Christine Hohmann-Dennhardt, and the</p> <p>6 depiction, at least in the chart, as I</p> <p>7 recall it, was as we've said before,</p> <p>8 overseeing everything that was going on</p> <p>9 with respect to emissions in the United</p> <p>10 States.</p> <p>11 MR. GIUFFRA: Could we take a</p> <p>12 quick break just for 5 minutes?</p> <p>13 MR. HEATHER: Sure.</p> <p>14 THE VIDEOGRAPHER: The time is</p> <p>15 1:29. We're going off the record.</p> <p>16 (Recess taken 1:29 p.m.)</p> <p>17 (Resumed 1:34 p.m.)</p> <p>18 THE VIDEOGRAPHER: The time is</p> <p>19 1:34 p.m. and we're back on record.</p> <p>20 BY MR. GIUFFRA:</p> <p>21 Q Did you ever discuss with</p> <p>22 Ms. Hohmann-Dennhardt that having you as</p> <p>23 the "main legal coordinator in the U.S.</p> <p>24 would add great value to VW"?</p> <p>25 A Yes, I think I did.</p>
<p style="text-align: right;">Page 247</p> <p style="text-align: center;">Freeh</p> <p>1 Q Other than the conversations</p> <p>2 that you had with Sally Yates and with John</p> <p>3 Cruden, did you have any other</p> <p>4 conversations with any U.S. Government</p> <p>5 officials about Volkswagen in 2015 and '16?</p> <p>6 A No.</p> <p>7 Q In 2016, at any time did you</p> <p>8 have any conversations with any U.S.</p> <p>9 Government officials about Volkswagen?</p> <p>10 A No.</p> <p>11 Q In 2017, did you have any</p> <p>12 conversations with any U.S. Government</p> <p>13 officials about Volkswagen?</p> <p>14 A No.</p> <p>15 Q 2018?</p> <p>16 A No.</p> <p>17 Q '19?</p> <p>18 A No.</p> <p>19 Q Now, did you prepare a chart</p> <p>20 identifying what your role would be as</p> <p>21 special counsel?</p> <p>22 A Yes, I did.</p> <p>23 Q And could you just briefly, for</p> <p>24 the record, describe that chart?</p> <p>25 A Yeah. It's in the materials</p>	<p style="text-align: right;">Page 249</p> <p style="text-align: center;">Freeh</p> <p>1 Q And did you have discussions --</p> <p>2 let me restate that.</p> <p>3 There came a time when you had a</p> <p>4 meeting with Manfred Doess and me in mid</p> <p>5 January 2016, right?</p> <p>6 A Yes.</p> <p>7 Q And the meeting lasted for what,</p> <p>8 two and a half hours?</p> <p>9 A Something like that, yeah.</p> <p>10 Q And it was at the Sullivan &amp;</p> <p>11 Cromwell office in Washington, D.C.?</p> <p>12 A Yes.</p> <p>13 Q And would it be fair to say that</p> <p>14 during that meeting we discussed the</p> <p>15 ongoing legal risks in the U.S. that</p> <p>16 Volkswagen faced?</p> <p>17 A Well, I'm not sure of how</p> <p>18 extensive the conversation was. We talked,</p> <p>19 I know, about my role and had been advised</p> <p>20 before the meeting by Christine</p> <p>21 Hohmann-Dennhardt that Manfred Doess was</p> <p>22 not agreeable to a role for me, but that I</p> <p>23 should try to meet with him and just</p> <p>24 persuade him that I could provide some</p> <p>25 assistance.</p>

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<p style="text-align: center;">Freeh</p> <p>1 Q But do you recall discussing</p> <p>2 during the meeting that you had with</p> <p>3 Manfred Doess and me some of the legal</p> <p>4 risks that -- let me restate that.</p> <p>5 During this meeting in mid</p> <p>6 January 2016 with Manfred Doess and myself,</p> <p>7 do you recall discussing the legal risks</p> <p>8 that Volkswagen faced in the United States?</p> <p>9 A Not specifically, no.</p> <p>10 Q Do you recall advising</p> <p>11 Ms. Hohmann-Dennhardt in an e-mail that you</p> <p>12 had discussed the legal risks in the United</p> <p>13 States with Dr. Doess and myself?</p> <p>14 A No, I don't recall that.</p> <p>15 Q Do you recall discussing with</p> <p>16 Dr. Doess and me the various regulatory</p> <p>17 investigations that were then pending</p> <p>18 against Volkswagen?</p> <p>19 A No, not in any detail. My</p> <p>20 recollection of the meeting was would there</p> <p>21 be a role for me in some capacity either as</p> <p>22 an attorney or a compliance advisor.</p> <p>23 I believe you had the chart. I</p> <p>24 think I sent the chart to Manfred that</p> <p>25 Christine and the board. And as I said, I</p>	<p style="text-align: center;">Freeh</p> <p>1 compliance work for Volkswagen?</p> <p>2 A Yes.</p> <p>3 Q And did you have discussions</p> <p>4 with Dr. Doess and me about having you be</p> <p>5 involved in the resolution of regulatory</p> <p>6 investigations?</p> <p>7 A Not a clear memory of that. I</p> <p>8 remember clearly the discussion about</p> <p>9 compliance. And then, as I mentioned</p> <p>10 before, would I be willing to serve as the</p> <p>11 compliance monitor if an agreement with the</p> <p>12 Department of Justice was made, and that</p> <p>13 was the reason for my follow-up to the</p> <p>14 Manfred later in the year.</p> <p>15 Q Now, I think it's -- I think you</p> <p>16 testified earlier that the document that's</p> <p>17 marked as Exhibit 25 to your expert report</p> <p>18 was an important -- it's an important</p> <p>19 document for purposes of your expert</p> <p>20 report, right?</p> <p>21 A I'm sorry, 25?</p> <p>22 Q Yeah. That's the Oliver Schmidt</p> <p>23 memo.</p> <p>24 A Oh, okay. I have it as 200. I</p> <p>25 see 25 -- okay, got it.</p>
Page 251	Page 253
<p style="text-align: center;">Freeh</p> <p>1 went into that meeting with the knowledge</p> <p>2 from Christine that Manfred was not</p> <p>3 supportive of a role for me, but I agreed</p> <p>4 to have the meeting because she and the</p> <p>5 Chairman of the Board asked me to do that.</p> <p>6 Q Do you recall discussing with</p> <p>7 Dr. Doess and me the work that was being</p> <p>8 performed by other law firms?</p> <p>9 A Yes. You brought that to my</p> <p>10 attention. You used the phrase attorney</p> <p>11 dysfunction and you were critical, as was</p> <p>12 Manfred, of both Jones &amp; Day and Kirkland.</p> <p>13 Q Do you recall discussing with</p> <p>14 Dr. Doess and me the work that Jones Day</p> <p>15 was performing?</p> <p>16 A No, not in any detail, just that</p> <p>17 they were doing an internal investigation.</p> <p>18 Q And do you recall discussions of</p> <p>19 the work that Kirkland &amp; Ellis was doing?</p> <p>20 A No, not in any detail, just that</p> <p>21 they were one of the firms working with you</p> <p>22 and there was not a lot of -- well, that's</p> <p>23 my answer.</p> <p>24 Q Did you have discussions with</p> <p>25 Dr. Doess and me about having you run the</p>	<p style="text-align: center;">Freeh</p> <p>1 Q It's 200.</p> <p>2 A Yep.</p> <p>3 Q And do you recall having the</p> <p>4 subject of David Geanakopoulos, the then</p> <p>5 general counsel of VW Group of America,</p> <p>6 coming up at your meeting with Manfred</p> <p>7 Doess and me?</p> <p>8 A I remember a discussion and then</p> <p>9 you asking me to read the Kirkland &amp; Ellis</p> <p>10 memo describing some of the events just</p> <p>11 referred to in this Exhibit 25.</p> <p>12 Q Well, in fact, didn't I provide</p> <p>13 you with a copy of Exhibit 25 to your</p> <p>14 expert report?</p> <p>15 A I don't recall that exhibit</p> <p>16 specifically, but I believe I -- you may</p> <p>17 have. I just don't recall.</p> <p>18 Q Do you recall discussing with</p> <p>19 Dr. Doess and me at any time whether</p> <p>20 Mr. Geanakopoulos could continue to serve</p> <p>21 as U.S. general counsel?</p> <p>22 A Yes.</p> <p>23 Q Do you recall discussing with</p> <p>24 Dr. Doess and/or me efforts that had been</p> <p>25 made to preserve e-mails of</p>



<p style="text-align: right;">Page 254</p> <p style="text-align: center;">Freeh</p> <p>1 Mr. Geanakopoulos?</p> <p>2 A Yes, I recall that.</p> <p>3 Q Do you recall discussing with</p> <p>4 Dr. Doess and me the potential impact of</p> <p>5 this document that's now attached to your</p> <p>6 report as Exhibit 25 --</p> <p>7 A Yes.</p> <p>8 Q -- on the resolution of U.S.</p> <p>9 litigation?</p> <p>10 A Yes.</p> <p>11 Q Do you recall -- let me restate</p> <p>12 that.</p> <p>13 Do you recall receiving e-mails</p> <p>14 from me that were sent to you that said</p> <p>15 attorney client communication work product</p> <p>16 confidential and privileged?</p> <p>17 A I'm not sure if you marked any</p> <p>18 of your e-mails that way to me. I remember</p> <p>19 marking some of mine to you in that manner.</p> <p>20 Q Okay.</p> <p>21 And why did you mark some of the</p> <p>22 communications that you were having with me</p> <p>23 as attorney client communication work</p> <p>24 product confidential and privileged?</p> <p>25 A Part of it was my FSS convention</p>	<p style="text-align: right;">Page 256</p> <p style="text-align: center;">Freeh</p> <p>1 on the record, then you're waiving any</p> <p>2 confidentiality.</p> <p>3 MR. GIUFFRA: I am only going to</p> <p>4 talk about just -- I want to just</p> <p>5 establish what he saw.</p> <p>6 BY MR. GIUFFRA:</p> <p>7 Q And do you recall also receiving</p> <p>8 a copy of a submission made by Volkswagen</p> <p>9 to the BaFin?</p> <p>10 A I don't recall that</p> <p>11 specifically, no.</p> <p>12 Q Do you recall discussing with</p> <p>13 Dr. Doess or me, or both, your own</p> <p>14 experience working with BaFin?</p> <p>15 A I may have related that since I</p> <p>16 had prior experience. Do I specifically</p> <p>17 recall that from our meeting, no.</p> <p>18 Q Do you recall discussing, either</p> <p>19 in writing or in person with Dr. Doess</p> <p>20 and/or me this Kirkland &amp; Ellis memo that</p> <p>21 was sent to the company in September 2015?</p> <p>22 A Yes.</p> <p>23 Q And do you recall that the memo</p> <p>24 generally covered prior precedence dealing</p> <p>25 with settlements of emissions cases in the</p>
<p style="text-align: right;">Page 255</p> <p style="text-align: center;">Freeh</p> <p>1 which would, I believe, automatically lead</p> <p>2 with that unless you took it off. That may</p> <p>3 have been part of the reason. I never</p> <p>4 thought we had an attorney client</p> <p>5 relationship.</p> <p>6 And if you'll note, all my</p> <p>7 communications with Christine</p> <p>8 Hohmann-Dennhardt, none of those were</p> <p>9 marked in that manner.</p> <p>10 Q But you're aware that the</p> <p>11 attorney disciplinary rules cover both the</p> <p>12 period post-retention and the period</p> <p>13 pre-retention?</p> <p>14 A Yes.</p> <p>15 Q Do you recall my sending you a</p> <p>16 copy of a memo that had been written by</p> <p>17 Kirkland &amp; Ellis on August 6, 2015?</p> <p>18 A Yes. I think you asked me what</p> <p>19 I thought of it.</p> <p>20 Q And --</p> <p>21 MR. HEATHER: Counsel, let me</p> <p>22 just interject. I have not seen that</p> <p>23 document or been told about its</p> <p>24 contents.</p> <p>25 So if you're going to put that</p>	<p style="text-align: right;">Page 257</p> <p style="text-align: center;">Freeh</p> <p>1 United States?</p> <p>2 A I don't recall that part of it.</p> <p>3 I recall you highlighting to me in the</p> <p>4 meeting the references to the general</p> <p>5 counsel. But I read it at the time, so</p> <p>6 whatever was in there, I read.</p> <p>7 Q Okay.</p> <p>8 Do you recall expressing any</p> <p>9 views on any of the conclusions stated in</p> <p>10 the Kirkland &amp; Ellis memo to either</p> <p>11 Dr. Doess and/or me?</p> <p>12 A Yeah. I think, I think I said</p> <p>13 with respect --</p> <p>14 MR. HEATHER: Let me caution you</p> <p>15 not to go into the contents unless he</p> <p>16 puts them in front of you.</p> <p>17 BY MR. GIUFFRA:</p> <p>18 Q No, I don't -- just, you just</p> <p>19 have to say yes or no as to the topics, but</p> <p>20 not the --</p> <p>21 A I'm sorry, could you restate</p> <p>22 that then?</p> <p>23 Q My question was, do you recall</p> <p>24 expressing any views on any of the</p> <p>25 conclusions stated in the Kirkland &amp; Ellis</p>

<p style="text-align: right;">Page 258</p> <p style="text-align: center;">Freeh</p> <p>1 memo to either Dr. Doess and/or me, and I</p> <p>2 think the answer to that is yes or no.</p> <p>3 A Well, not the conclusions, but I</p> <p>4 did give you my reaction to one aspect of</p> <p>5 it, what you asked me about.</p> <p>6 Q Okay.</p> <p>7 Now in addition to the meeting</p> <p>8 in mid January at Sullivan &amp; Cromwell, you</p> <p>9 had telephone conversations with Dr. Doess,</p> <p>10 right?</p> <p>11 A Yes.</p> <p>12 Q And you had telephone</p> <p>13 conversations with me?</p> <p>14 A Correct.</p> <p>15 Q And we discussed aspects of our</p> <p>16 strategy for trying to resolve the U.S.</p> <p>17 diesel emissions cases, right?</p> <p>18 A No. My recollection is we were</p> <p>19 talking about my role and the conversation</p> <p>20 then shifted to some type of compliance</p> <p>21 work as opposed to any legal work, which I</p> <p>22 got the clear impression was not being</p> <p>23 supported by the general counsel at least.</p> <p>24 Q The general counsel of --</p> <p>25 A Manfred.</p>	<p style="text-align: right;">Page 260</p> <p style="text-align: center;">Freeh</p> <p>1 emissions matters as quickly as it could?</p> <p>2 A Yeah. Well, the board told me</p> <p>3 that. I'm sure that both you and Manfred</p> <p>4 said that. I just don't have a specific</p> <p>5 recollection of that and certainly no</p> <p>6 details about how that would be done.</p> <p>7 Q Now, did there come a time when</p> <p>8 there were press reports that you were</p> <p>9 going to be retained by Volkswagen?</p> <p>10 A Yes.</p> <p>11 Q Do you know how those press</p> <p>12 reports came about?</p> <p>13 A No. Ms. Dennhardt thought they</p> <p>14 came out of Germany somewhere. That's what</p> <p>15 she told me.</p> <p>16 Q Did Ms. Dennhardt indicate</p> <p>17 whether she had spoken to the press about</p> <p>18 you being hired?</p> <p>19 A She never said she spoke to the</p> <p>20 press.</p> <p>21 Q Did you ever speak to the press</p> <p>22 about being hired by Volkswagen?</p> <p>23 A No, I don't think so.</p> <p>24 Q Did you have any conversations</p> <p>25 with any reporters at any time about</p>
<p style="text-align: right;">Page 259</p> <p style="text-align: center;">Freeh</p> <p>1 Q Oh.</p> <p>2 And your impression was based on</p> <p>3 what, what Ms. Hohmann-Dennhardt told you?</p> <p>4 A Well, first</p> <p>5 Dr. Hohmann-Dennhardt told me that and</p> <p>6 that's reflected in the e-mails that I gave</p> <p>7 you, and it was also clear from the</p> <p>8 conversation that another attorney was not</p> <p>9 wanted or needed.</p> <p>10 However, the conversation then</p> <p>11 moved to whether I could assist in the</p> <p>12 regulatory or compliance aspect. I think I</p> <p>13 said I could. And then the conversations</p> <p>14 just trailed off and nothing happened.</p> <p>15 Q Do you recall any discussions at</p> <p>16 any time with Dr. Doess about what his</p> <p>17 strategy was for trying to resolve the U.S.</p> <p>18 diesel emissions issues?</p> <p>19 A No, not specifically.</p> <p>20 Q Do you recall any discussion of</p> <p>21 the topic of a global settlement?</p> <p>22 A No.</p> <p>23 Q But did you have any</p> <p>24 understanding as to whether the company was</p> <p>25 looking to try to resolve the diesel</p>	<p style="text-align: right;">Page 261</p> <p style="text-align: center;">Freeh</p> <p>1 anything having to do with Volkswagen?</p> <p>2 A No.</p> <p>3 Q Do you know why you were not</p> <p>4 retained to be counsel to Volkswagen?</p> <p>5 A Well, both counsel and</p> <p>6 compliance advisor -- yeah, I mean my</p> <p>7 understanding was the board and management</p> <p>8 was in favor of it, but Manfred and --</p> <p>9 Manfred at least was not. At least I know</p> <p>10 that specifically because I was told that</p> <p>11 by Hohmann-Dennhardt.</p> <p>12 Q Were you aware that there was</p> <p>13 opposition to you from members of the</p> <p>14 so-called Works Council?</p> <p>15 A I heard about that. There was a</p> <p>16 press report about that. I don't know the</p> <p>17 accuracy or the specifics of it.</p> <p>18 Q Do you recall drafting a press</p> <p>19 release announcing your appointment as</p> <p>20 special counsel to assist in resolving</p> <p>21 litigation law enforcement and regulatory</p> <p>22 actions relating to the emissions</p> <p>23 investigations and to design and implement</p> <p>24 a company-wide compliance program?</p> <p>25 A I believe Ms. Hohmann-Dennhardt</p>

<p style="text-align: right;">Page 266</p> <p style="text-align: center;">Freeh</p> <p>1 So she knew that. That could have very</p> <p>2 likely been a topic, but I don't recall it</p> <p>3 specifically.</p> <p>4 Q Do you remember</p> <p>5 Ms. Hohmann-Dennhardt in February 2016</p> <p>6 communicating with you about a meeting that</p> <p>7 she was going to be having in Washington</p> <p>8 with the Department of Justice?</p> <p>9 A I don't recall that, no. I</p> <p>10 recall when I met her in January, she said</p> <p>11 they wanted to have a meeting with the</p> <p>12 Department of Justice, would like me to</p> <p>13 come to that. But I didn't have any</p> <p>14 subsequent conversations with her about the</p> <p>15 meeting.</p> <p>16 Q Do you remember</p> <p>17 Ms. Hohmann-Dennhardt at any time</p> <p>18 expressing to you concern about her</p> <p>19 inability to play a more active role in the</p> <p>20 resolution of U.S. litigation?</p> <p>21 A Yes.</p> <p>22 Q What did she tell you?</p> <p>23 A She said she was just very</p> <p>24 frustrated and said that Manfred Doess was</p> <p>25 not accepting either her role or my</p>	<p style="text-align: right;">Page 268</p> <p style="text-align: center;">Freeh</p> <p>1 A Yes. My understanding from</p> <p>2 speaking to her was that she thought that</p> <p>3 she should be the lead officer or</p> <p>4 management board member for all</p> <p>5 conversations with the Department of</p> <p>6 Justice.</p> <p>7 Q Now, did you subsequently learn</p> <p>8 that Ms. Hohmann-Dennhardt was going to be</p> <p>9 leaving Volkswagen?</p> <p>10 A Yes.</p> <p>11 Q And how did you learn that?</p> <p>12 A I think I read it in the</p> <p>13 newspaper.</p> <p>14 Q Did you subsequently have a</p> <p>15 conversation with Ms. Hohmann-Dennhardt</p> <p>16 after you read it in the newspaper that she</p> <p>17 might be leaving the company?</p> <p>18 A No.</p> <p>19 Q Have you ever discussed with</p> <p>20 Ms. Hohmann-Dennhardt reasons for leaving</p> <p>21 the company?</p> <p>22 A No.</p> <p>23 Q Have you ever had any</p> <p>24 discussions with Ms. Hohmann-Dennhardt</p> <p>25 about her -- about the company's U.S.</p>
<p style="text-align: right;">Page 267</p> <p style="text-align: center;">Freeh</p> <p>1 proposed role and expressed a lot of</p> <p>2 frustration about that.</p> <p>3 Q Did you ever discuss with</p> <p>4 Ms. Hohmann-Dennhardt designing and</p> <p>5 implementing a Daimler-like compliance</p> <p>6 program for VW?</p> <p>7 A Sure. That was a big part of</p> <p>8 our conversations.</p> <p>9 Q And did you ever learn that a</p> <p>10 man named Dr. Garcia had been appointed by</p> <p>11 the board to be the lead person vis-a-vis</p> <p>12 the U.S. over Hohmann-Dennhardt?</p> <p>13 A Yes, at some point I did hear</p> <p>14 that.</p> <p>15 Q And that's something that would</p> <p>16 have been discussed with you and</p> <p>17 Ms. Hohmann-Dennhardt, right?</p> <p>18 A I don't believe I discussed that</p> <p>19 with her. I think I read that somewhere in</p> <p>20 the media.</p> <p>21 Q Did Ms. Hohmann-Dennhardt ever</p> <p>22 discuss with you what she thought her role</p> <p>23 should be in connection with VW's</p> <p>24 communications with the Department of</p> <p>25 Justice?</p>	<p style="text-align: right;">Page 269</p> <p style="text-align: center;">Freeh</p> <p>1 settlements?</p> <p>2 A No.</p> <p>3 Q Now, you would agree that you</p> <p>4 discussed with Dr. Doess and me the</p> <p>5 organization of the U.S. legal team?</p> <p>6 A Yes.</p> <p>7 Q And you also discussed with</p> <p>8 Dr. Doess and me, you know, the role of</p> <p>9 Mr. Geanacopoulos in the U.S. legal team,</p> <p>10 right?</p> <p>11 A I don't recall that</p> <p>12 specifically, no. I think my recollection</p> <p>13 of the conversation was what role, if any,</p> <p>14 would I play on a legal team and that was,</p> <p>15 I think, a central part of our</p> <p>16 conversation.</p> <p>17 Q Without disclosing any</p> <p>18 privileged communications, you certainly</p> <p>19 did discuss, would it be fair to say, the</p> <p>20 implications for Mr. Geanacopoulos of</p> <p>21 Exhibit 25 to your expert report?</p> <p>22 MR. HEATHER: Objection to form.</p> <p>23 A Yeah, I think I expressed an</p> <p>24 opinion to you. You asked me my opinion on</p> <p>25 that and I gave it to you in an e-mail.</p>

<p style="text-align: right;">Page 270</p> <p style="text-align: center;">Freeh</p> <p>1 Q Now, did you also prepare</p> <p>2 talking points for CEO Matthias Muller in</p> <p>3 connection with a visit that he was making</p> <p>4 to the United States?</p> <p>5 A Yes, for the Detroit Auto Show.</p> <p>6 Q And you did that at whose</p> <p>7 request?</p> <p>8 A Christine Hohmann-Dennhardt.</p> <p>9 Let me just supplement that. At</p> <p>10 the Board of Management meeting, he said</p> <p>11 that he was going to the Detroit Auto Show</p> <p>12 and I remember asking him if he had a press</p> <p>13 statement, because the press was going to</p> <p>14 be very aggressive. And he said no. And I</p> <p>15 think he may have also asked for talking</p> <p>16 points or asked whether I could provide</p> <p>17 some talking points.</p> <p>18 Q So the CEO asked you to prepare</p> <p>19 some talking points for him?</p> <p>20 A Christine Hohmann-Dennhardt for</p> <p>21 sure, and I think he also mentioned it at</p> <p>22 the end of the meeting. He was very --</p> <p>23 excuse me, he was very concerned about the</p> <p>24 appearance at the show.</p> <p>25 Q Did the talking points that you</p>	<p style="text-align: right;">Page 272</p> <p style="text-align: center;">Freeh</p> <p>1 experience, you know, what the U.S. press</p> <p>2 would ask a CEO in that type of situation,</p> <p>3 particularly the auto press.</p> <p>4 Q But you had particular expertise</p> <p>5 because you worked in the Daimler matter?</p> <p>6 A Sure. I knew a lot about what</p> <p>7 they would probably be asking. I thought I</p> <p>8 did anyway.</p> <p>9 Q And so you were attempting in</p> <p>10 the talking points to address questions</p> <p>11 that Mr. Muller might get from the U.S.</p> <p>12 press in the Detroit Auto Show?</p> <p>13 A Yes, that was exactly the</p> <p>14 purpose.</p> <p>15 Q Do you recall discussing with</p> <p>16 anyone at VW in either late 2015 into 2016</p> <p>17 how other automobile OEMs had addressed</p> <p>18 serious problems that they faced with U.S.</p> <p>19 regulators?</p> <p>20 A I think I had discussions about,</p> <p>21 you know, what was done at Daimler, to the</p> <p>22 extent that I could talk about those</p> <p>23 things, most of which were publicly known</p> <p>24 or disclosed.</p> <p>25 A lot of the meeting on the 6th</p>
<p style="text-align: right;">Page 271</p> <p style="text-align: center;">Freeh</p> <p>1 prepared for Mr. Muller reflect your</p> <p>2 understanding of what Mr. Muller and the</p> <p>3 company's strategy was for trying to</p> <p>4 address the U.S. situation?</p> <p>5 A No. I wrote them up as just</p> <p>6 sort of media points that I would suggest</p> <p>7 be made given what I was reading in the</p> <p>8 newspapers in the U.S.</p> <p>9 Q Did you have any discussions</p> <p>10 with anyone in either late 2015 and 2016</p> <p>11 about VW's ability to fix the affected</p> <p>12 vehicles in the U.S.?</p> <p>13 A No.</p> <p>14 Q Do you remember that topic ever</p> <p>15 coming up?</p> <p>16 A No.</p> <p>17 Q Do you recall any discussions</p> <p>18 with anyone about -- let me restate that.</p> <p>19 Did the talking points for CEO</p> <p>20 Muller's U.S. visit that you prepared</p> <p>21 contain any recitation of what you, VW's</p> <p>22 strategy would be for trying to resolve the</p> <p>23 U.S. litigations?</p> <p>24 A I don't believe so. They were</p> <p>25 very general talking points based on my</p>	<p style="text-align: right;">Page 273</p> <p style="text-align: center;">Freeh</p> <p>1 or 7th with the board was what happened to</p> <p>2 Daimler and could that model work at</p> <p>3 Volkswagen. So yes, I did discuss Daimler</p> <p>4 in that regard.</p> <p>5 Q And what was the Daimler model?</p> <p>6 A Well, the Daimler model was</p> <p>7 bringing me in as a -- called an</p> <p>8 independent compliance advisor to the</p> <p>9 board, the Board of Supervisors, and</p> <p>10 working with the management to assess the</p> <p>11 compliance plan, put together a mediation</p> <p>12 strategy, and then help implement it. And</p> <p>13 then that morphed into a monitorship by the</p> <p>14 Department of Justice after my 3-year work</p> <p>15 as a compliance advisor.</p> <p>16 Q Now in -- but in Daimler, you</p> <p>17 were appointed by -- well, recommended by</p> <p>18 the Department of Justice and then</p> <p>19 appointed by a federal judge pursuant to a</p> <p>20 settlement agreement, right?</p> <p>21 A Well, yes, that was the second</p> <p>22 phase. The first phase I was just working</p> <p>23 for the board.</p> <p>24 Q Got it.</p> <p>25 And so there was discussion</p>

<p style="text-align: right;">Page 330</p> <p style="text-align: center;">Freeh</p> <p>1 policy statements issued by the Sentencing</p> <p>2 Commission, in applying the guidelines?</p> <p>3 A Yes.</p> <p>4 Q So it would be fair to say that</p> <p>5 what you're doing is, in your opinion,</p> <p>6 you're critical of the exercise of the</p> <p>7 prosecutor's discretion in applying the</p> <p>8 sentencing guidelines?</p> <p>9 A No.</p> <p>10 Q Why not?</p> <p>11 A Well, my testimony is different</p> <p>12 from that. My testimony has been that the</p> <p>13 calculation made and the justification for</p> <p>14 the calculation was incorrect and not</p> <p>15 supported by either the guidelines or the</p> <p>16 precedent that is cited in the sentencing</p> <p>17 agreement. That's different from your</p> <p>18 question.</p> <p>19 Q And that's because you don't</p> <p>20 like the 50 percent discount, right?</p> <p>21 A It's not a question of not</p> <p>22 liking it. It's just not justified.</p> <p>23 Q And that 50 percent discount</p> <p>24 went, as far as you know, to the question</p> <p>25 of the pecuniary loss, right?</p>	<p style="text-align: right;">Page 332</p> <p style="text-align: center;">Freeh</p> <p>1 A Because I'm not.</p> <p>2 Q Other than, you know, because</p> <p>3 you're not, why specifically?</p> <p>4 A Certainly within his discretion.</p> <p>5 Q And it was within his discretion</p> <p>6 to take into account all of the money that</p> <p>7 Volkswagen paid to consumers, right?</p> <p>8 A If he wanted to.</p> <p>9 Q In your experience as both a</p> <p>10 prosecutor and a defense lawyer, do parties</p> <p>11 often have disputes about the extent to</p> <p>12 which management culpability should be</p> <p>13 reflected in a statement of facts in a</p> <p>14 guilty plea?</p> <p>15 A Yes.</p> <p>16 Q With the company urging less</p> <p>17 culpability and the government wanting more</p> <p>18 culpability, right?</p> <p>19 A It's usually not the reverse.</p> <p>20 Q Now, you keep talking about a</p> <p>21 question that was put by Judge Cox to the</p> <p>22 Department of Justice and to Volkswagen and</p> <p>23 I just want to give you a copy of the</p> <p>24 sentencing transcript, which we'll mark as</p> <p>25 203.</p>
<p style="text-align: right;">Page 331</p> <p style="text-align: center;">Freeh</p> <p>1 A Yes, base fine.</p> <p>2 Q Would you agree with me that the</p> <p>3 Department of Justice was uniquely situated</p> <p>4 to assess VW's cooperation and the extent</p> <p>5 thereof?</p> <p>6 MR. HEATHER: Objection to form.</p> <p>7 A Only if it had all the accurate</p> <p>8 and complete information.</p> <p>9 Q And you have no reason to</p> <p>10 believe that DOJ did not have all of the</p> <p>11 accurate and complete information, right?</p> <p>12 A Well, I think I testified a</p> <p>13 number of times today that I'm not sure</p> <p>14 that's the case based on the sentencing</p> <p>15 judge's question and the lack of the</p> <p>16 government's response.</p> <p>17 Q Are you aware that Judge Cox</p> <p>18 considered and rejected claims for</p> <p>19 restitution before imposing sentence</p> <p>20 against Volkswagen?</p> <p>21 A Yes.</p> <p>22 Q And are you critical of that</p> <p>23 decision?</p> <p>24 A No.</p> <p>25 Q Why not?</p>	<p style="text-align: right;">Page 333</p> <p style="text-align: center;">Freeh</p> <p>1 (Exhibit 203, Sentencing</p> <p>2 Transcript, was marked for</p> <p>3 Identification, as of this date.)</p> <p>4 BY MR. GIUFFRA:</p> <p>5 Q Now, I'll try to speed this up.</p> <p>6 Page 26, line 16 to 23 -- 22,</p> <p>7 actually -- is what you believe to be the</p> <p>8 question that was not answered by either</p> <p>9 the prosecutors or Volkswagen?</p> <p>10 A Well, you keep characterizing it</p> <p>11 as a question. I have not.</p> <p>12 What I said is that reading that</p> <p>13 portion you've just cited, but other</p> <p>14 portions of the transcript it's very clear</p> <p>15 to me that the judge was intensely</p> <p>16 interested in whether or not there was</p> <p>17 senior management involvement and certainly</p> <p>18 presented that interest and concern to the</p> <p>19 parties. And whether you call it a</p> <p>20 question or not, the Court was clearly very</p> <p>21 intensely interested in that and did not</p> <p>22 receive, in my view, an accurate answer.</p> <p>23 Q Okay.</p> <p>24 But you've been describing this</p> <p>25 as a question.</p>

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<p style="text-align: right;">Page 334</p> <p style="text-align: center;">Freeh</p> <p>1 A No, you've been describing it as</p> <p>2 a question.</p> <p>3 Q Well, because you seem to think</p> <p>4 that somehow someone should have, you know,</p> <p>5 provided some information to Judge Cox.</p> <p>6 And so if you look on page 25,</p> <p>7 26, 27 and 28, 29 into 31, all those pages,</p> <p>8 there is a long colloquy from Judge Cox in</p> <p>9 which he imposes his sentence and he</p> <p>10 doesn't -- he just says and that will be --</p> <p>11 at page 31 -- and that will be the sentence</p> <p>12 of the Court.</p> <p>13 He doesn't at any point, you</p> <p>14 know, pause, ask a question other than just</p> <p>15 making the statement we don't know how far</p> <p>16 up the corporate ladder it goes.</p> <p>17 So my question to you is, what</p> <p>18 was Volkswagen supposed to do while it's</p> <p>19 sitting there and the judge is imposing</p> <p>20 sentence on Volkswagen, should we have like</p> <p>21 jumped up and said, oh, your Honor, let us</p> <p>22 tell you about, you know, everything we</p> <p>23 know that we've told the government about</p> <p>24 senior management, or management?</p> <p>25 A Well, I'll try to rephrase it</p>	<p style="text-align: right;">Page 336</p> <p style="text-align: center;">Freeh</p> <p>1 senior participation. That's my opinion.</p> <p>2 Q Okay.</p> <p>3 And the only senior</p> <p>4 participation I guess that you've</p> <p>5 identified here today that wasn't -- is, I</p> <p>6 guess, Winterkorn who was indicted, some</p> <p>7 allegation about Horn who was never</p> <p>8 indicted, and some allegation about</p> <p>9 Geanacopoulos who was never indicted, is</p> <p>10 that right?</p> <p>11 A Well, they're not allegations.</p> <p>12 They're statements. They're testimony in</p> <p>13 the case of Horn's conversation with</p> <p>14 Johnson that postdates the sentence. But</p> <p>15 the other material predates the sentence.</p> <p>16 And I wouldn't call it allegations. I</p> <p>17 would call it facts and reports that would</p> <p>18 lead any reasonable person to conclude that</p> <p>19 Horn, certainly, was well aware and on</p> <p>20 notice about defeat devices and obviously</p> <p>21 did not do anything, as far as the record</p> <p>22 is concerned, to address that.</p> <p>23 Q And again, you're presupposing</p> <p>24 that no documents were put before Judge Cox</p> <p>25 in any other proceedings referencing the</p>
<p style="text-align: right;">Page 335</p> <p style="text-align: center;">Freeh</p> <p>1 again for you.</p> <p>2 Based on the judge's comments</p> <p>3 and based upon the knowledge that the</p> <p>4 company had at the time of sentencing, it</p> <p>5 should have been communicated to the Court</p> <p>6 that it wasn't just the low-level</p> <p>7 supervisors that the Court had in mind when</p> <p>8 he was assessing and imposing sentence.</p> <p>9 But, conversely, it was some of the most</p> <p>10 senior people in the company.</p> <p>11 Q Well, at the point of the</p> <p>12 sentence, there was a statement of facts</p> <p>13 which identified a series of managers who</p> <p>14 were, by Volkswagen's admission, involved</p> <p>15 in the diesel admissions matter.</p> <p>16 MR. HEATHER: Objection to form.</p> <p>17 Objection to form.</p> <p>18 A Yeah, that's what said in the</p> <p>19 sentence, in the statement of facts.</p> <p>20 Q So -- and again, what Volkswagen</p> <p>21 told the Department of Justice about senior</p> <p>22 management, you don't know, right?</p> <p>23 A Well, I know the Court was not</p> <p>24 informed by either party of the information</p> <p>25 that the company clearly had that there was</p>	<p style="text-align: right;">Page 337</p> <p style="text-align: center;">Freeh</p> <p>1 risk consequences memo that's referenced in</p> <p>2 your report?</p> <p>3 A I'm not talking about other</p> <p>4 proceedings. I'm talking about what was</p> <p>5 before this Court.</p> <p>6 Q Yeah, but in Volkswagen</p> <p>7 proceedings.</p> <p>8 A I'm not familiar with all the</p> <p>9 other Volkswagen proceedings.</p> <p>10 Q I got it. So you don't know.</p> <p>11 So you're sort of guessing there's nothing</p> <p>12 in the other proceedings.</p> <p>13 MR. HEATHER: Objection to form.</p> <p>14 BY MR. GIUFFRA:</p> <p>15 Q If I were to represent to you</p> <p>16 that Judge Cox was aware of the risk</p> <p>17 consequences memo based on other</p> <p>18 proceedings that were before him, would</p> <p>19 that have changed your opinion?</p> <p>20 A I'd have to read the transcript.</p> <p>21 Q Could you just identify for the</p> <p>22 record all of the questions that Judge Cox</p> <p>23 put to the parties at the April 21, 2017</p> <p>24 sentencing hearing that should have caused</p> <p>25 counsel for the United States in Volkswagen</p>



<p style="text-align: right;">Page 338</p> <p style="text-align: center;">Freeh</p> <p>1 to disclose information about senior</p> <p>2 management involvement beyond what had</p> <p>3 already been disclosed to the Court?</p> <p>4 MR. HEATHER: I'm going to</p> <p>5 object to that because he's been asked</p> <p>6 that and answered that multiple times.</p> <p>7 And at this point it's bordering on</p> <p>8 badgering the witness by keeping</p> <p>9 repeating the same questions.</p> <p>10 MR. GIUFFRA: Well, it's a</p> <p>11 pretty important point, though, Fred.</p> <p>12 Your expert is claiming that</p> <p>13 there was some sort of a concealment</p> <p>14 of information from Judge Cox.</p> <p>15 The only thing that's in his</p> <p>16 expert report is on page 26 of the</p> <p>17 sentencing transcript, line 16 through</p> <p>18 22, that is contained in the middle of</p> <p>19 the actual imposition of the sentence.</p> <p>20 So I'm wanting to know what the</p> <p>21 question was that someone should have</p> <p>22 answered and didn't answer.</p> <p>23 MR. HEATHER: Well, I'm going to</p> <p>24 stand by my objection. You may not</p> <p>25 like the fact that the basis on which</p>	<p style="text-align: right;">Page 340</p> <p style="text-align: center;">Freeh</p> <p>1 A Yeah, well, look, I have</p> <p>2 answered this multiple times, but I'll be</p> <p>3 happy to answer it again.</p> <p>4 In my report, besides the</p> <p>5 paragraph on page 26, line 16 which you</p> <p>6 cite, there's two other references that,</p> <p>7 for me, in my opinion, make it very clear,</p> <p>8 if I was standing before the Court that</p> <p>9 this judge was very interested and was</p> <p>10 inquiring, maybe not asking a specific</p> <p>11 question, but was certainly inquiring about</p> <p>12 whether there was senior level management</p> <p>13 complicity.</p> <p>14 And my opinion, again, repeating</p> <p>15 it many times for you, but happy to do it</p> <p>16 again, is that the documentation I've</p> <p>17 reviewed and based on my experience clearly</p> <p>18 indicates to me that the company was aware</p> <p>19 of high-level management and that was not</p> <p>20 given to the judge.</p> <p>21 Q Okay.</p> <p>22 My question, though, Mr. Freeh,</p> <p>23 was where else is there a reference in the</p> <p>24 sentencing transcript to the judge wanting</p> <p>25 to know about high-level management</p>
<p style="text-align: right;">Page 339</p> <p style="text-align: center;">Freeh</p> <p>1 his opinion was given is acceptable to</p> <p>2 you, but you've asked the question,</p> <p>3 he's given you an answer, he's</p> <p>4 explained what in the sentencing</p> <p>5 transcript causes him to believe that</p> <p>6 something wasn't disclosed that should</p> <p>7 have been disclosed. But he's done</p> <p>8 that multiple times.</p> <p>9 MR. GIUFFRA: Okay. All I'm</p> <p>10 asking --</p> <p>11 MR. HEATHER: So why don't you</p> <p>12 ask him if he has anything to add.</p> <p>13 BY MR. GIUFFRA:</p> <p>14 Q Okay.</p> <p>15 I'd just like to know, beyond</p> <p>16 paragraph -- which is the only thing we've</p> <p>17 talked about -- page 26, lines 16 through</p> <p>18 22 of this transcript, are there any other</p> <p>19 questions that judge -- or any other</p> <p>20 statements by Judge Cox that should have</p> <p>21 alerted Volkswagen and the Department of</p> <p>22 Justice that Judge Cox wanted to know, you</p> <p>23 know, name, rank and serial number for</p> <p>24 other managers that were involved in the</p> <p>25 wrongdoing?</p>	<p style="text-align: right;">Page 341</p> <p style="text-align: center;">Freeh</p> <p>1 involvement other than, you know, the</p> <p>2 statement we don't know how far up the</p> <p>3 corporate ladder it goes, which was in the</p> <p>4 middle of his actual imposition of</p> <p>5 sentence?</p> <p>6 A Well, there's references to the</p> <p>7 little guy being left holding the bag in</p> <p>8 another portion of the transcript.</p> <p>9 Q That's also in the imposition of</p> <p>10 sentence.</p> <p>11 A Right. Well, there's several</p> <p>12 references to it in the imposition of</p> <p>13 sentence.</p> <p>14 Q Okay.</p> <p>15 But it wasn't a question that</p> <p>16 was put or a statement that was made before</p> <p>17 the judge started to impose his sentence on</p> <p>18 Volkswagen?</p> <p>19 A Well, look, the sentencing is</p> <p>20 not over until the judge imposes sentence.</p> <p>21 My view is it was a very</p> <p>22 apparent opportunity for the judge to hear</p> <p>23 an answer to a matter that intensely</p> <p>24 interested him and was relevant to the</p> <p>25 sentencing.</p>

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<p>Freeh</p> <p>1 Q How many sentencings have you</p> <p>2 attended as a prosecutor, a judge, and as a</p> <p>3 defense lawyer? Probably hundreds, right?</p> <p>4 A Yes.</p> <p>5 Q Okay.</p> <p>6 Have you ever -- can you recall</p> <p>7 an instance in the middle of the imposition</p> <p>8 of a sentence where a prosecutor jumped up</p> <p>9 and interrupted the Court?</p> <p>10 A Well, it's a pretty narrow</p> <p>11 question. I recall many instances during a</p> <p>12 sentencing where the government interrupted</p> <p>13 the defense attorney, where the defense</p> <p>14 attorney interrupted the prosecutor, where</p> <p>15 either party tried to bring information to</p> <p>16 the attention of the judge, or where</p> <p>17 they've asked for a side bar to talk to the</p> <p>18 judge not off the record, but certainly not</p> <p>19 in the courtroom about certain matters. It</p> <p>20 happens all the time.</p> <p>21 Q By the way, would it be fair to</p> <p>22 say that in imposing sentence on</p> <p>23 Volkswagen, Judge Cox understood, as he</p> <p>24 expressed, while he was imposing the</p> <p>25 sentence, that this was a case of</p>	<p>Freeh</p> <p>1 Q None at all?</p> <p>2 A No.</p> <p>3 Q Not in an e-mail and not by</p> <p>4 telephone?</p> <p>5 MR. HEATHER: No is sufficient.</p> <p>6 BY MR. GIUFFRA:</p> <p>7 Q Are you aware that your</p> <p>8 testimony is going to be used in -- let me</p> <p>9 restate that.</p> <p>10 Do you have any understanding of</p> <p>11 what purpose plaintiffs intend to make use</p> <p>12 of your testimony?</p> <p>13 A Just generally.</p> <p>14 Q Would you state for the record</p> <p>15 what you think it is?</p> <p>16 A Well, I think it relates to the</p> <p>17 issue of damages in the current lawsuit and</p> <p>18 litigation and whether based on the guilty</p> <p>19 plea at least, all the adequate information</p> <p>20 and possible sanctions were considered with</p> <p>21 respect to the company.</p> <p>22 Q Well, in terms of all the</p> <p>23 sanctions with respect to the company, if</p> <p>24 there had been a higher criminal fine paid</p> <p>25 by Volkswagen, that money would have gone</p>
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<p>Freeh</p> <p>1 deliberate massive fraud perpetrated by VW</p> <p>2 management?</p> <p>3 A Well, that's what he said, yes.</p> <p>4 MR. HEATHER: As a matter of</p> <p>5 personal privilege, I will not make my</p> <p>6 plane if you going to keep going. And</p> <p>7 you're entitled to keep going, but if</p> <p>8 you'd let me know, I'd appreciate it.</p> <p>9 MR. GIUFFRA: I'm going to try.</p> <p>10 I just want to go through my outline</p> <p>11 to make sure I've covered all the</p> <p>12 topics and then we'll be out of here.</p> <p>13 THE WITNESS: What time is your</p> <p>14 flight?</p> <p>15 MR. HEATHER: 6:40.</p> <p>16 MR. GIUFFRA: Oh, you're fine.</p> <p>17 THE WITNESS: He's a New Yorker.</p> <p>18 MR. HEATHER: I have questions,</p> <p>19 though.</p> <p>20 BY MR. GIUFFRA:</p> <p>21 Q Did you ever express any</p> <p>22 disappointment to Ms. Hohmann-Dennhardt</p> <p>23 about not being retained as Special Counsel</p> <p>24 of Volkswagen?</p> <p>25 A No.</p>	<p>Freeh</p> <p>1 to the U.S. Treasury, right?</p> <p>2 A Yes.</p> <p>3 Q So in a case which we're talking</p> <p>4 about now between opt-out plaintiffs and</p> <p>5 Volkswagen, what is the relevance of your</p> <p>6 testimony, in your own words?</p> <p>7 A Well, the relevance is up to the</p> <p>8 judge to determine.</p> <p>9 Q Would you describe a criminal</p> <p>10 fine as a form of damages that goes to</p> <p>11 consumers -- not typically, right?</p> <p>12 A No. As I said, it goes to the</p> <p>13 government.</p> <p>14 Q So what the relevance -- what is</p> <p>15 your understanding of the relevance of your</p> <p>16 proposed expert testimony in this upcoming</p> <p>17 trial that we're going to have in February</p> <p>18 of next year?</p> <p>19 A Again, I think the relevance is</p> <p>20 for the Court to decide.</p> <p>21 Q Can you provide any -- do you</p> <p>22 have any other reason --</p> <p>23 A I think I just did, but I'll say</p> <p>24 it again for you, whether or not the fine</p> <p>25 and sentence in the criminal case was based</p>



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<p>Freeh</p> <p>1 upon an adequate and proper sentencing</p> <p>2 guideline calculation, whether the company</p> <p>3 disclosed all the relevant information at</p> <p>4 the time and whether that sentence deterred</p> <p>5 the company from further unlawful action.</p> <p>6 Q And sitting here today, the only</p> <p>7 other unlawful action that you've</p> <p>8 identified is this whole question about</p> <p>9 branded title, is that right?</p> <p>10 A The certified pre-owned cars,</p> <p>11 yes.</p> <p>12 Q You're not aware of any other</p> <p>13 wrongdoing by Volkswagen other than the</p> <p>14 certified pre-owned car issue, right?</p> <p>15 A That's the only one I considered</p> <p>16 in my opinion.</p> <p>17 Q And that issue was brought to</p> <p>18 your attention by plaintiff's counsel,</p> <p>19 right?</p> <p>20 A Yes.</p> <p>21 Q Are you aware of how much each</p> <p>22 plaintiff in this case would have received</p> <p>23 under the class action settlement?</p> <p>24 A No.</p> <p>25 Q And you don't know what their</p>	<p>Freeh</p> <p>1 didn't do any research on that issue.</p> <p>2 Q Would it be fair to say that a</p> <p>3 plea agreement typically reflects the</p> <p>4 ability of the government to prove or not</p> <p>5 prove the crimes charged in that agreement?</p> <p>6 A Not necessarily.</p> <p>7 Q Now, I think we've established</p> <p>8 you don't know all the facts and</p> <p>9 circumstances underlying the department's</p> <p>10 decision to enter into this plea agreement,</p> <p>11 right?</p> <p>12 A I don't.</p> <p>13 Q And you don't know how many</p> <p>14 documents VW produced to DOJ, right?</p> <p>15 A No.</p> <p>16 Q You're not aware of how many</p> <p>17 documents DOJ received before deciding to</p> <p>18 reach the plea agreement with VW, right?</p> <p>19 A No.</p> <p>20 Q Haven't seen the entire document</p> <p>21 production to the DOJ by VW, right?</p> <p>22 A Have not.</p> <p>23 Q You're not aware of the</p> <p>24 specifics of any briefings by VW to the</p> <p>25 Department of Justice, right?</p>
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<p>Freeh</p> <p>1 settlement demands are, right?</p> <p>2 A No.</p> <p>3 Q Have you ever seen an expert</p> <p>4 report suggesting a method for calculating</p> <p>5 punitive damages?</p> <p>6 A In this case?</p> <p>7 Q In any case.</p> <p>8 A I don't recall.</p> <p>9 Q Have you ever seen an expert</p> <p>10 report suggesting a potential range of</p> <p>11 punitive damages?</p> <p>12 A I've not seen one myself, no.</p> <p>13 Q Have you ever seen an expert</p> <p>14 opining on the application of the</p> <p>15 sentencing guidelines in a civil case?</p> <p>16 A No.</p> <p>17 Q Have you ever seen an expert</p> <p>18 opining on the application of the</p> <p>19 sentencing guidelines in the context of</p> <p>20 civil punitive damages?</p> <p>21 A No.</p> <p>22 Q Are you aware of any cases of</p> <p>23 the magnitude of Volkswagen settling as</p> <p>24 quickly as the Volkswagen case did?</p> <p>25 A I have no knowledge of that. I</p>	<p>Freeh</p> <p>1 A No.</p> <p>2 Q You don't know how many</p> <p>3 presentations VW made to the Department of</p> <p>4 Justice, right?</p> <p>5 A Same answer.</p> <p>6 Q Don't know anything about the</p> <p>7 conversations between VW's counsel and the</p> <p>8 Department of Justice in connection with</p> <p>9 the plea agreement, right?</p> <p>10 A You asked me that many times,</p> <p>11 no.</p> <p>12 Q Okay.</p> <p>13 And are you aware of any</p> <p>14 specific documents that the Department of</p> <p>15 Justice did not receive from VW?</p> <p>16 A No.</p> <p>17 Q Are you aware of the extent to</p> <p>18 which VW's cooperation with the Department</p> <p>19 of Justice resulted in later criminal</p> <p>20 indictments?</p> <p>21 A No.</p> <p>22 Q And you don't know the extent to</p> <p>23 which the Department of Justice took VW's</p> <p>24 ability to pay into account in entering</p> <p>25 into this plea agreement, right?</p>

<p style="text-align: right;">Page 350</p> <p style="text-align: center;">Freeh</p> <p>1 A I don't think that's in the</p> <p>2 sentencing agreement, no.</p> <p>3 Q In your experience would that be</p> <p>4 taken into account expressly on the face of</p> <p>5 the sentencing document?</p> <p>6 A It would be one of the Filip</p> <p>7 factors. It would also be a Rita factor in</p> <p>8 the sentencing guidelines, yes.</p> <p>9 Q Would all of the Filip factors</p> <p>10 normally be listed in a plea agreement?</p> <p>11 A No, not necessarily.</p> <p>12 Q So in your experience the -- how</p> <p>13 the government goes about exercising its</p> <p>14 discretion as reflected in the Filip</p> <p>15 factors would not be reflected on the text</p> <p>16 of the plea agreement, right?</p> <p>17 A Well, I think we said before --</p> <p>18 I said before, sorry -- that all of the</p> <p>19 government's factors that went into its</p> <p>20 decision-making would not necessarily be</p> <p>21 reflected in the sentencing agreement.</p> <p>22 Q And is it your understanding</p> <p>23 that if there are punitive damages awarded</p> <p>24 in this case it would go to the named</p> <p>25 plaintiffs in this case, it would go to the</p>	<p style="text-align: right;">Page 352</p> <p style="text-align: center;">Freeh</p> <p>1 Q And am I correct that the</p> <p>2 Department of Justice, if it believed that</p> <p>3 a plea was obtained on false pretenses,</p> <p>4 would have the ability to petition the</p> <p>5 Court to undo the plea?</p> <p>6 A Yes.</p> <p>7 Q And in this case, if the</p> <p>8 Department of Justice believed that</p> <p>9 Volkswagen had misled the Department of</p> <p>10 Justice in obtaining the resolution that it</p> <p>11 obtained here, it could make an application</p> <p>12 to Judge Cox to undo the plea, right?</p> <p>13 A It could, yes.</p> <p>14 Q And, in fact, in this case</p> <p>15 because of the existence of the monitor,</p> <p>16 the term of the monitor, VW is still before</p> <p>17 Judge Cox, right?</p> <p>18 A Yes.</p> <p>19 Q And if VW failed to cooperate</p> <p>20 with the Department of Justice during the</p> <p>21 period of the monitorship, the Department</p> <p>22 of Justice could make an application to</p> <p>23 Judge Cox to undo the plea, right?</p> <p>24 A Yeah, it would depend on the</p> <p>25 facts and circumstances, but assuming they</p>
<p style="text-align: right;">Page 351</p> <p style="text-align: center;">Freeh</p> <p>1 plaintiffs in this case?</p> <p>2 MR. HEATHER: Asked and</p> <p>3 answered.</p> <p>4 BY MR. GIUFFRA:</p> <p>5 Q Or you don't know?</p> <p>6 A I assume they would get the</p> <p>7 damages in a punitive settlement.</p> <p>8 Q Or punitive award, right?</p> <p>9 A Whatever.</p> <p>10 Q In your experience as a</p> <p>11 prosecutor, would the DOJ reach a plea</p> <p>12 agreement when it suspects that a company</p> <p>13 has -- when it expects to uncover further</p> <p>14 undisclosed wrongdoing?</p> <p>15 MR. HEATHER: Objection to form.</p> <p>16 A I'm sorry, I don't understand</p> <p>17 your question.</p> <p>18 Q Let me restate the question.</p> <p>19 When the government enters into</p> <p>20 a plea with a company, it normally does so</p> <p>21 after it's satisfied that it's aware of all</p> <p>22 the wrongdoing that was engaged in by the</p> <p>23 company, right?</p> <p>24 A That's the general posture for a</p> <p>25 settlement, yes.</p>	<p style="text-align: right;">Page 353</p> <p style="text-align: center;">Freeh</p> <p>1 reached a certain level of materiality,</p> <p>2 they could.</p> <p>3 Q And so, you know, sitting here</p> <p>4 today, if the Department of Justice read</p> <p>5 your report and thought that VW had done</p> <p>6 something untoward in connection with its</p> <p>7 sentencing, the Department of Justice would</p> <p>8 have the ability to seek to a higher fine,</p> <p>9 right -- higher penalty, excuse me?</p> <p>10 A Well, it's a complex question.</p> <p>11 The Department of Justice could take action</p> <p>12 to void the plea agreement if any of the</p> <p>13 conditions in the plea agreement were not</p> <p>14 met or if other information came to their</p> <p>15 attention that would give them that basis.</p> <p>16 Q Including if VW had not provided</p> <p>17 information to the Department of Justice</p> <p>18 prior to the plea that it had represented</p> <p>19 it had done?</p> <p>20 A That would be a factor, yes.</p> <p>21 Q And if VW stopped cooperating</p> <p>22 with the Department of Justice, they could</p> <p>23 try to undo the plea agreement and seek a</p> <p>24 higher penalty, right?</p> <p>25 A If they stopped cooperating or</p>